TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1238.

JACOB C. SEALE, APPELLANT,

vs.

H. B. HOLMES, SHERIFF, AND EX-OFFICIO COLLECTOR OF STATE AND PARISH TAXES FOR THE STATE OF LOUISIANA AND PARISH OF MADISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 21, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 United States Circuit Court, Western District of Louisiana.
In Equity.

J. C. SEALE
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 122.

Transcript of Proceedings in the 8th Judicial District Court, Parish of Madison, State of Louisiana. Filed Jan'y 11th, 1886.

STATE OF LOUISIANA, *Parish of Madison:*

Eighth Judicial Circuit.

2 J. C. SEALE
vs.
H. B. HOLMES, Sheriff & Tax Collector, *et al.* } No. 665.

Be it known that on the 14th day of August, anno Domini eighteen hundred and eighty-five, Jacob C. Seale, by his attorney, Wade R. Young, Esq., filed in the office of the clerk of the 8th district court aforesaid his petition in the words and figures following & in above-styled suit, to wit:

Petition.

To the Honorable E. J. Delony, judge of the eighth district court in and for the parish of Madison, State of Louisiana:

The petition of Jacob C. Seale, a resident of the parish of Madison aforesaid, respectfully represents that heretofore, to wit, on the 13th day of March, 1882, petitioner recovered a judgment in the supreme court of Louisiana on appeal from the said 8th district court for the said parish of Madison for the sum of seven thousand five hundred and thirty-seven dollars and forty cents, which judgment was rendered in the suit styled J. C. Seale *vs.* The Parish of Madison, No. 36 on the docket of said 8th district court, said parish of Madison being a body corporate in and by virtue of the laws of the State of Louisiana and represented by the police jury of the parish of Madison.

That said indebtedness was caused by your petitioner for services rendered by him in defence of certain suits in the United States circuit court for the eastern district of Louisiana in his capacity of district attorney *pro tem.* for said parish of Madison, an office created by law by act of the Legislature of Louisiana approved Sep-
3 tember 29th, 1868, and which office petitioner held from the 24th of August, A. D. 1871, and continued in said office until 20th of December, 1876, and under the law he was both a State officer as well as a parish officer, and was required to act as district attorney whenever the district attorney was absent from the parish or unable from any cause to act.

That during the time your petitioner continued to occupy said office as aforesaid the courts were authorized and required by law then in force, in rendering a judgment against any parish or municipal corporation, to include in the said judgment an order decreeing

the assessment forthwith and the collection of a special parish tax by the legal authorities at a per centum upon the assessment-rolls for the current year sufficient to pay and satisfy the judgment therein rendered with interest and all costs of suit to be taxed.

Your petitioner further represents before your petitioner recovered his said judgment the Legislature of the State of Louisiana repealed said law and thereby deprived your petitioner of all remedy for the collection of his said judgment, and leaving your petitioner to wait for the accumulation of a surplus in the parish treasury, which is of uncertain occurrence on account of the extravagant use of money by said police jury and misapplication of the funds of said parish by the police jury thereof.

Now your petitioner further represents that said police jury, although the parish is indebted to your petitioner by said judgment as aforesaid and their refusal to pay the same, has, through
4 the machinery of assessment and taxation, *has* caused to be levied a tax on petitioner's said judgment for the year 1882 for State and parish taxes [of] $116.50, for the [year] 1883 $157.50, & for the year 1884 $195.00, and penalties in the same, $275.98.

Your petitioner further represents that Henry B. Holmes, sheriff and *ex-officio* tax collector for the parish of Madison, has seized the judgment of your petitioner against said parish, and has advertised the same for sale to pay said illegal and unjust taxes, and proposes to sell the same on the 15th day of August, 1885.

Your petitioner avers that the action of the parish of Madison and the authorities who assessed, levied, and are attempting to collect the aforesaid taxes on said judgment is spoil-ation and oppression, and an attempt to repudiate the obligation of the parish by taxation, which is illegal, unjust, and oppressive, and in conflict with the 14th Amendment of the Constitution of the United States, being an attempt to deprive your petitioner of his property without due process of law.

Your petitioner further represents that the assessment and levy of of said tax on the judgment of petitioner is illegal, null, and void. Said judgment, being based on compensation for personal services rendered the parish as an officer of the State by petitioner, is not liable to assessment and taxation either by the State or the parish of Madison; that neither the State of Louisiana nor the parish of of Madison has any power, right, or authority of law to levy a tax upon said judgment, which evidences the indebtedness of said parish of Madison to your petitioner for the balance of his salary,
5 and the fees and emoluments of his office for said years, and that said assessment and levy and the proceedings had in pursuance thereof are an attempt on the part of said State and parish to confiscate said indebtedness, and to deprive petitioner of his property without due process of law, in flagrant violation of the provisions of the 14th Amendment to the Constitution of the United States, are an illegal, arbitrary, and oppressive abusive by the officers and agents of said State and parish of the power conferred on them by law.

Your petitioner further shows that even if said State and parish

possessed the power, right, and authority of law to levy a tax on the salary of a public officer, which this petitioner has denied, and still denies, and will ever deny, said proceedings are illegal, null, and void, and repugnant to and in violation of the aforesaid provisions of the 14th Amendment to the Constitution of the United States, that no State shall deprive any person of life, liberty, or property without due process of law, for the reason that the constitution and laws of the State of Louisiana requires that taxation shall be equal and uniform, and that the officers and agents in violation and disregard of said provisions have assessed the judgment of petitioner against the said parish of Madison at its full face value when other property in said parish, real and personal, is assessed at only ⅓ or ½ of its actual cash value.

Your petitioner further shows that no legal notice to pay said taxes has ever been served on him in conformity to the laws [and] requirements, and that for said reason also said proceedings are unconstitutional, null, and void as aforesaid.

Wherefore, the premises considered, your petitioner prays for a writ of injunction, directed to the said Henry B. Holmes, sheriff and *ex-officio* tax collector of the said parish af Madison, and to his
6 successors in office, enjoining and restraining them from proceeding to the sale of said judgment to pay and satisfy said void and illegal tax; that the said Henry B. Holmes, tax collector, and the said parish of Madison, by Elias S. Dennis, president of its police jury, be cited to answer this demand, and that said injunction be perpetuated, and the said assessment and levy of State and parish taxes on the judgment of petitioner against the said parish of Madison, and the proceedings attempted to be had in pursuance thereof be adjudged to be absolutely null and void and of no effect, as being repugnant to and in violation of the aforesaid provisions of the 14th Amendment to the Constitution of the United States, and for costs and general and equitable relief.

WADE R. YOUNG, *Att'y.*

STATE OF LOUISIANA, *Parish of Madison:*

Before me, the undersigned authority, personally came and appeared Jacob C. Seale, the petitioner, who, being by me first duly sworn, deposes and says that all the allegations made and facts stated in the foregoing petition are true and correct, and that the Hon. E. J. Deloney, judge of the 8th district, is absent from the parish of Madison.

J. C. SEALE.

Subscribed and sworn to before me this 14th day of August, 1885.

F. M. DAWSON,
Clerk 8th District Court.

STATE OF LOUISIANA, *Parish of Madison:*

The foregoing petition and affidavit considered, it is ordered
7 that a writ of injunction issue as prayed for herein upon plaintiffs furnishing bond with good security in amount and conditioned according to law.

This done and signed this 14th day of August, 1885.

[L. S.] F. M. DAWSON,
Clerk 8th District Court.

(Endorsed on margin.)

I hereby accept service of the within petition, affidavit, order, and writ of injunction and waive copies this 15th day of August, A. D. 1885.

H. B. HOLMES,
Sheriff and Tax Collector.

I acknowledge service of the within petition, affidavit, & order, citation, & copy this 30th day September, 1885.

E. S. DENNIS,
President Police.

(Petition endorsed:) No. 665. 8th district court, Madison parish, La. J. C. Seale *vs.* H. B. Holmes, sheriff & tax collector, *et al.* Petition, affidavit, & order. Filed August 14, 1885. F. M. Dawson, clerk. Recorded August 14, 1885, in record of suits B., pages 391, 392, & 393. F. M. Dawson, clerk.

Bond for Injunction.

8th District Court.

JACOB C. SEALE
vs.
H. B. HOLMES, Sheriff & *Ex-Officio* Tax Collector of the Parish of Madison, *et al.* } No. 665.

STATE OF LOUISIANA, *Parish of Madison:*

Know all men by these presents that Jacob C. Seale, as principal, and Friend L. Maxwell, as security, both of the parish of Madison, State aforesaid, are held and firmly bound unto Henry B. Holmes, sheriff and *ex-officio* tax collector for the parish of Madison, and Elias S. Dennis, president of the police jury of the parish of Madi-
8 son, in the sum of twelve hundred dollars, for which sum, well and truly to be paid, we hereby bind ourselves, our heirs, administrators, and assigns, firmly by these presents, this 14th day of August, A. D. 1885. The condition of the above bond is such that whereas the above-bounden Jacob C. Seale has this day prayed for and obtained from the said court a writ of injunction in the above-entitled suit:

Now, if the said above-bounden Jacob C. Seale shall well and truly pay *to* and satisfy all such costs and damages as the said Henry B. Holmes, sheriff and *ex-officio* tax collector, and Elias S. Dennis, president of the police jury of the parish of Madison, defendants, may recover against him in case it shall be decided that the writ of injunction has been wrongfully obtained, then this obli-

gation to become null and void; otherwise to remain in full force and virtue.

J. C. SEALE.
F. L. MAXWELL.

Witnesses:
G. L. BONEY.
T. MORLEY.

(Endorsed:) No. 665. 8th district court, Madison parish, La. J. C. Seale *vs.* H. B. Holmes, sheriff & tax collector, *et al.* Bond for injunction. Filed August 14th, 1885. F. M. Dawson, clerk. Recorded August 14th, 1885, in record of suits "B," page 393. F. M. Dawson, clerk.

Application and Bond for Removal.

8th District Court, Parish of Madison.

J. C. SEALE
vs.
H. B. HOLMES, Tax Collector, *et al.* } No. 665.

To the hon'l. the judge of the said court:

9 The plaintiff in the above-styled suit respectfully shows that the suit is one of a civil nature in equity, now pending in your hon'l. court, where the matter in dispute exceeds, exclusive of costs, the sum of $500.00 (five hundred dollars), and arising under the Constitution and laws of the United States, being an injunction bill to restrain the defendant's tax collector for State of Louisiana and parish of Madison from depriving your petitioner of his property without due process of law, in violation of the provisions of the 14th Amendment to the Constitution of the United States, and that your petitioner desires to avail himself of the provisions of the act of Congress for such cases made and provided to remove said suit into the circuit court of the United States for the western district of Louisiana. Wherefore, the premises considered, he files herewith his petition and bond conditioned according to law, and prays that they may be accepted and no further proceedings had in said suit in this hon'l. court.

WADE R. YOUNG,
Of Counsel.

Bond for Removal.

8th District Court, Parish of Madison.

J. C. SEALE *vs.* H. B. HOLMES, Tax Coll.

Know all men by the presents that we, Jacob C. Seale, as principal, and H. M. Floyd, as security, are held and firmly bound unto H. B. Holmes, tax collector for the State of Louisiana and parish of Madison, in the full and just sum of two hundred and fifty dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our

administrators and heirs, firmly by these presents, Nov. 3rd, 1885.

The condition of the above obligation is such that whereas
10 the above-bounden principal as plaintiff in the above-entitled suit has filed his petition and bond to remove said suit into the circuit court of the United States for the western district of Louisiana: Now, therefore, if he shall enter in such circuit court on the 1st day of its then next session a copy of the record in such suit, and shall pay all costs that may be awarded by said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, then and [in] that case this bond to be null and void; otherwise to remain of full force and effect.

J. C. SEALE.
H. M. FLOYD.

Witness:
JAS. M. CHEILTY.
W. J. YOUNG.

(Endorsed:) No. 665. D. C. 8th district court, Madison parish, La. J. C. Seale *vs.* H. B. Holmes, sheriff & tax collector, *et al.* Application & bond for removal. Filed Nov. 3rd, 1885. F. M. Dawson, clerk.

8th District Court.

STATE OF LOUISIANA, *Parish of Ouachita:*

CLERK'S OFFICE.

I certify that the above and foregoing twelve pages contain a full, true, and complete transcript of all the documents filed and proceedings had in the suit styled J. C. Seale *vs.* H. B. Holmes, sheriff & tax collector, *et al.*, No. 665 on the docket of this court.

Witness my signature and the seal of said court this 4th day of November, 1885.

[SEAL.] F. M. DAWSON,
Clerk of s'd Court.

(Endorsed:) In the circuit court, western district of La.
11 J. C. Seale *vs.* H. B. Holmes, sheriff, *et als.* No. 122. Filed at Opelousas, Jan'y 11th, 1886. J. B. Beattie, d'y clerk.

Extract from the Minutes.

United States Circuit Court, Western District of Louisiana.

THURSDAY, *April 15th*, 1886.

Court met pursuant to adjournment.

Present: His honor Aleck Boarman, district judge, presiding.

J. C. SEALE
vs. } No. 122.
H. B. HOLMES, Sheriff, &-., *et als.*

Plea to jurisdiction and motion to remand filed on behalf of defendants.

Plea to Jurisdiction and Motion to Remand. Filed April 15th, 1886.

United States Circuit Court, Western District of Louisiana.

J. C. SEALE
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 122.

To the honorable the judges of said court:

Now come the defendants and, without answering, *and* appearing herein solely for the purposes of this motion, with due respect show that this honorable court has no jurisdiction to try and determine the issues presented in this cause, for the reason that said cause is a controversy arising entirely between citizens of the State of Louisiana, and is not a cause arising under the Constitution of the
12 United States; show that the courts of said State have exclusive jurisdiction of and are fully competent to try and determine the issues involved in said cause; show that this honorable court is without jurisdiction, either of the parties or of the subject-matter of said controversy, and is without authority to try and determine the issues presented. Wherefore appearers move and pray that said cause be dismissed from this honorable court & remanded to the court from whence it came.

STONE & MURPHY, *Attorneys.*

Filed April 15th, 1886.

J. W. WHEATON, *Clerk.*

Extract from the Minutes.

United States Circuit Court, Western District of Louisiana.

FRIDAY, *April 16th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

J. C. SEALE
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 122.

Motion to remand filed herein on behalf of defendant- was, on motion, assigned for argument on Saturday, April 17th, 1886.

Extract from the Minutes.

United States Circuit Court, Western District of Louisiana.

SATURDAY, *April 17th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, preseding.

13 J. C. SEALE
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 122.

The motion to remand filed herein on behalf of defendants came on, as per assignment, to be heard. After argument same was taken under advisement by the court.

Extract from the Minutes.

United States Circuit Court, Western District of Louisiana.

THURSDAY, *April 29th*, 1886.

Court met pursuant to adjournment.

Present: His honor Aleck Boarman, district judge, presiding.

J. C. SEALE
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 122.

Amended and supplemental bill filed.

Amended and Supplemental Bill. Filed April 29th, 1886.

United States Circuit Court, Western District of Louisiana. In Equity.

J. C. SEALE
vs.
H. B. HOLMES, Tax Coll., *et als.* } No. 122.

To the honorable the judges of the circuit court of the United States for the western district of Louisiana:

Jacob C. Seale, a resident of and citizen of the State of Louisiana and parish of Madison, brings his supplemental and amended
14 bill against Parish of Madison, a political corporation created by the laws of the State of Louisiana and represented by Elias S. Dennis, president of its police jury, and Henry B. Holmes, collector, and James H. Gilfoil, assessor, of State and parish taxes, all residents and citizens of the said State of Louisiana and parish of Madison, and complains and says—

That complainant was district attorney *pro tem.* or parish attorney for the parish of Madison from the year 1871 to 1874, inclusive, except one year when his right to the office was in controversy.

That during said time suits for large amounts were brought against the levee commission of the two parishes of Madison and Carroll, and which the two parishes composing the levee district would have had to pay had judgment been rendered in favor of the plaintiffs therein.

That the act of 1868, No. 120, creating the office of district attorney *pro tem.*, provided that such officer should be the parish attorney, and it was made his duty to represent the parish in any case which the parish was interested, and should, besides, perform such other duties for the benefit of the parish as might be required by the police jury, and was entitled to receive pay for and on the amounts involved for defending suits against the parish—R. S., sec. 1086.

That complainant filed answers in all of said suits, and with the aid and assistance of associate counsel, which he was empowered to employ by the ordinance of the police jury of said parish, defended sucessfully such as were tried as test cases.

That it was upon information furnished by him that the defense to them was made.

That he made several trips to New Orleans in preparing
15 the defense, and was present at the trial of them in the U. S. circuit court, and co-operated with the attorneys employed by them, and assisted in defraying the expenses incident to the suits, both in New Orleans and Washington, one of the cases having been appealed to the Supreme Court of the United States.

That the amount involved in said suits aggregated near or was one million dollars, and that, although only two of the suits were actually taken up and tried as test cases, and only one taken to the U. S. Supreme Court, the judgments in such suits were decided of the issues presented in all the other suits, and said suits were abandoned by the plaintiffs thereto, and the parish thereby relieved of the indebtedness.

That there was legally and justly due complainant for his said services so rendered the sum of $34,388.00, less $5,400.00 paid, and said sum formed a part of the salary and fees and emoluments of his said office.

That at the time his services were rendered and his debt accrued the law required that whenever a judgment was rendered against a municipal corporation the judgment at the same time should provide for its payment by ordering the assessment and collection of a special tax sufficient to satisfy the same, and this provision of law formed part of the contract under which the indebtedness accrued, which could not be impaired [by] the subsequent repeal of the law.

That complainant, having made amicable demand in — on the parish authorities for payment and satisfaction of his debt so due for the salary and fees of and emoluments of his office, brought suit against the parish of Madison, in the district court for said parish, and carried said suit by appeal to the supreme court of Louisiana.

16 That the hon'l. supreme court of Louisiana decided, on the trial of said appeal, that as only two of the cases in which complainant had filed answers for the said parish of Madison were actually tried, while the others awaited the issue of these, and when they were determined were no further prosecuted, these suits were, in point of fact, the only ones defended, and gave complainant judgment for only the sum of $7,537.40, with legal interest from judicial demand; and that said hon'l. court further decided that the contract of complainant with the said parish of Madison, being an implied contract for the payment of fees and salary and emoluments of his office, did not come within the intendment of the provision of the U. S. Constitution, and that the subsequent repeal of *of* the law by the act of 1877 did not impair the obligation of a contract as to him, and refused to order the levy of a tax to pay and satisfy the judgment.

That complainant made application to the police jury of the parish for payment and satisfaction of the judgment, and, being refused, caused a writ of *fi. fa.* to be placed in the hands of the sheriff for execution, which was returned *nulla bona*, for the reason that said parish had no property rights or credits which could be taken in execution.

That complainant thereon filed a petition for an alternative writ

of mandamus, which was also carried on appeal to the supreme court of Louisiana, and said court again refused to make the rule absolute, and to grant a peremptory mandamus ordering the levee and collection of a tax to pay and satisfy the judgment.

17 That the police jury of the said parish of Madison then agreed with complainant to pay and satisfy the judgment rendered by the hon'l. the supreme court of Louisiana, and thus prevented him from prosecuting a writ of error to the Supreme Court of the U. S., and did pay to complainant in part satisfaction of said judgment in the year 188- the sum of $——.

That having thus induced complainant to abandon the prosecution of a writ of error by the partial payment and satisfaction of the judgment, and well knowing that the delays for obtaining the writ had elapsed, the said police jury refused to carry out the agreement and to make any further provision for the payment of the balance of the judgment, or to pay and satisfy the same or any part thereof, and that complainant is now prosecuting a suit before this hon'l. court to compel a specific performance of said agreement.

That meantime the said police jury, for the purpose of injuring and oppressing complainant, and of confiscating his *his* said judgment under the guise of taxation, and thereby depriving him of his salary and fees and emoluments of his office, has caused the said H. B. Holmes, collector of State and parish taxes for the said parish of Madison, to seize the judgment of complainant for taxes pretended to be due for the years —, and amounting in the aggregate to the sum of —, unlawfully assessed on said judgment by the said police jury, and James H. Gufoil, assessor of State and parish taxes for the said parish of Madison, and to advertise the same for sale to pay and satisfy such illegal taxes.

18 That complainant has paid all the State and parish taxes legally and justly due by him to the State of Louisiana and parish of Madison, and has applied to the said police jury and the said James H. Gufoil, assessor, and the said H. B. Holmes, collector, to desist from said wrongful attempt to confiscate the judgment of complainant and thus deprive him of the salary and fees and emoluments of his office so justly due to him, and so unjustly withheld from him, but that the said police jury and the said James H. Gufoil, assessor, and the said H. B. Holmes, collector, falsely pretended that by the provisions of the revenue acts of the State for the years 1882 and 1884 and the ordinances of the police jury in pursuance thereof they are required to assess for taxation all judgments, suits, and causes in action, and levy annual taxes thereon, and the said police jury and the said James H. Gufoil, assessor, and the said H. B. Holmes, collector, will, unless restrained, proceed to confiscate and sell the judgment of complainant against the parish of Madison.

Your orator shows that the implied contract with the said parish of Madison for the salary and fees and emoluments of his office did come within the intendment of the provision of the U. S. Constitution relating to the impairment of contracts, and that the act of 1869, providing for the levy and collection of a tax to pay the

judgment, did enter into and form a part of the contract, and the repealing act of 1877, and the interpretation put thereon by the hon'l. the supreme court of Louisiana in the case of your orator, are unconstitutional, null, and void, as being repugnant to and in violation of section 10, article I, of the Constitution of the U. S.

19 Your orator further shows that the revenue acts of the State of Louisiana for the year- 1882 and 1884, in so far as they authorize or require the said police jury and the said J. H. Gufoil, assessor, and the said H. B. Holmes, collector, to apply and levy and collect said taxes on the judgment so held by your orator against the said parish of Madison, and the ordinances of the police jury made in pursuance thereof, are unconstitutional, null, and void, as being repugnant to and in violation of the aforesaid section 10 of article I of the Constitution of the United States relating to the impairment of contracts, and repugnant to and in violation of sec. 1 of the 14th Amendment to said Constitution, as depriving your orator of his property without due process of law.

Your orator shows that at the time of the origin of his said contract no power, right, or authority existed in the State of Louisiana, or with said parish of Madison, to tax the salary and fees and emoluments of his office, and that the right did exist in him to compel the prompt payment of such salary and fees and emoluments.

That the illegal and unconstitutional legislation of the State of Louisiana and the unwarranted decisions of its hon'l. supreme court has impaired the obligation of his contract by taking away entirely all remedy for its enforcement, and are about to destroy the obligation by subjecting his judgment to State and parish taxation, which will absorb the amount thereof and operate a virtual confiscation before he can have any remedy for its enforcement.

That except for such unconstitutional legislation and such denial of justice by the hon'l. the supreme court, and such failure and refusal by the said police jury to carry out in good faith the agreement of compromise with your orator, the said judgment

20 would have long ago been paid and satisfied, and that the said State of Louisiana and parish of Madison in thus withholding from your orator payment of the debt so justly due to him, and at the same time imposing taxes thereon which will ultimately absorb the amount of the debt, and depriving him of his property without due process of law, and an impairing — the obligation of his contract:

Wherefore, the premises considered, your orator prays to be allowed to — the pleadings and to file this amended and supplemental bill, and that a writ of injunction issuing out of and under the seal of this hon'l. court be directed to said Henry B. Holmes, collector of State and parish taxes for the State of Louisiana and parish of Madison, enjoining and restraining him and his successors in office from *selling* the judgment of your orator against the said parish of Madison to satisfy the demand of the State of Louisiana and parish of Madison for State and parish taxes levyed thereon, and to the said parish of Madison, by Elias S. Dennis, president of its police jury, and James H. Gilfoil, assessor, and H. B. Holmes, collector, of State

and parish taxes, enjoining and restraining them, and each of them, and their successors in office, from assessing said judgment for taxation, and from levying, or attempting to levy, State and parish and district taxes thereon.

And that writs of subpœna issue to the said parish of Madison, represented by Elias S. Dennis, president of the police jury, and to the said James H. Gilfoil, assessor, and the said Henry B. Holmes, collector, of State and parish taxes, thereby commanding them, and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this hon'l. court, and then and there full, true,
21 direct, and perfect answers make to all and singular the premises, but not upon oath or affirmation, the benefit whereof is expressly waived. And that it be decreed that the aforesaid acts of the Legislature of the State of Louisiana, and the interpretation of the hon'l. supreme court thereon, and the ordinances of the police jury, and the proceedings of the said defendants had in pursuance thereof, are unconstitutional, null, and void, as repugnant to and in violation of the aforesaid provision of the Constitution of the U. S., and that they be perpetually enjoined, they and their successors in office, from assessing the judgment of complainant against the said parish of Madison for taxation, and from levying taxes thereon, and for such further or other relief in the premises as the nature of this case may require and to your honors shall seem meet.

WADE R. YOUNG, *Solic-tor.*

Before me, the undersigned authority, personally came and appeared Wade R. Young, who, having been by me duly sworn, deposes and says that he is the solicitor for the complainant, and that all the facts stated and allegations made in the foregoing bill are true and correct to the best of his knowledge and belief.

WADE R. YOUNG.

Sworn and subscribed before me this 29th day of April, 1886.

J. B. BEATTIE,
D'y Clerk.

(Endorsed:) Filed April 29th, 1886. J. B. Beattie, d'y clerk.

22 *Extract from the Minutes.*

United States Circuit Court, Western District of Louisiana.

MONDAY, *July 19th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

J. C. SEALE
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 122.

Motion to remand sustained. See decree.

Decree. Filed July 20th, 1886.

United States Circuit Court, Western District of Louisiana.

J. C. SEALE
vs.
H. B. HOLMES, Tax Collector. } No. 122.

This cause came on to be heard on the motion of defendants to remand the suit to the State court, and the court being of the opinion that — record in the State court did not disclose a proper case for removal, and that amendments were not permissable in this court to remedy the defect and set out the necessary facts to give this court jurisdiction, it is ordered, adjudged, and decreed that the amended bill offered by the complainant be disallowed, and that the suit be remanded to the 8th district court for the parish of Madison and State of Louisiana.

This done, had, and signed in open court this 20th day of July, 1886.

ALECK BOARMAN,
U. S. Judge.

23 (Endorsed:) No. 122. U. S. circuit court, western district La. J. C. Seale *vs.* H. B. Holmes, tax collector. Judgment. Filed July 20th, 1886. J. B. Beattie, d'y clerk.

Order Allowing Appeal.

Extract from the Minutes

United States Circuit Court, Western District of Louisiana.

TUESDAY, *July 20th*, 1886.

Court met pursuant to adjournment.
Present: His honor Aleck Boarman, district judge, presiding.

J. C. SEALE
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 122.

On motion of Wade R. Young, Esq., solicitor for complainant, it is ordered that an appeal be granted in this case, returnable into the Supreme Court of [the] United States within 30 days from the date hereof, with a supersedeas and affirmative order continueing in force a preliminary injunction granted herein until further order of the United States Supreme Court, upon complainants entering into bond, conditioned according to law, in the sum of five hundred dollars ($500.00), solicitors for defendants being present in open court and taking cognizance thereof.

Appeal Bond. Filed July 31st, 1886.

Know all men by these presents that we, Jacob C. Seale, as principal, and Joseph M. Seale, as surety, are held and firmly bound

unto H. B. Holmes, sheriff and *ex-officio* collector of State
24 and parish taxes for the State of Louisiana and parish of Madison, in the full and just sum of five hundred dollars, to be paid to the said H. B. Holmes, sheriff, etc., their certain attorneys and executors and administrators, jointly & severally by these presents.

Sealed with our seals and dated this 29th day of July, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately at a circuit court of the United States for the western district of Louisiana, in a suit depending in said court between Jacob C. Seale, as plaintiff, and the said H. B. Holmes, sheriff, etc., as defendant, a decree was rendered against the said Jacob C. Seale, and the said plaintiff having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said H. B. Holmes, sheriff, etc., citing and admonishing [him] to be and appear at a Supreme Court of the United States within thirty days from the date of said order of appeal:

Now the condition of the above obligation is such that if the said Jacob C. Seale shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of Charles J. McFarland and John P. Seale on the day and date first herein written.

J. C. SEALE.
J. M. SEALE.

Witnesses:
C. J. McFARLAND.
J. P. SEALE.

Approved by—
——.

Before me, the undersigned authority, personally came and
25 appeared Joseph M. Seale, who signed, sealed, and delivered the foregoing instruments in my presence, and the said Joseph M. Seale, being by me duly sworn, deposes and says that he own- in fee-simple and is possessed of property rights and credits within the said district which can be taken in execution of the value largely exceeding the sum of five hundred dollars over and above all liabilities and exemptions.

J. M. SEALE.

Sworn to and subscribed before me this 29th day of July, A. D. 1886.

[SEAL.] S. S. P. DANGERFEILD,
Notary Public.

Approved July 31st, 1886.

ALECK BOARMAN,
U. S. Judge.

[Endorsed:] Filed July 31st, 1886. No. 122. Appeal bond. J. B. Beattie, d'y clerk.

Extract of Minutes.

WEDNESDAY, *August 4th*, 1886.

Court met pursuant to adjournment.

Present: His hon. Aleck Boarman, dist. judge, presiding.

Ordered, That the court do now adjourn until the next regular term.

ALECK BOARMAN,
U. S. Judge.

26 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, J. B. Beattie, deputy clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 25 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of J. C. Seale *vs.* H. B. Holmes, sheriff, *et als.*, No. 122 of the docket of the said court.

Witness my hand and the seal of said court, at the city of Monroe, La., this 19th day of August, A. D. 1886.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE,
Deputy Clerk.

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that J. B. Beattie, whose name is signed to the above certificate as deputy clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was, at the time of signing said certificate and is now, the deputy clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such deputy clerk.

Given under my hand, at the city of Shreveport, La., in said district, this 24th day of August, A. D. 1886.

ALECK BOARMAN, *Judge.*

Endorsed on cover: W. Louisiana C. C. U. S. No. 1238. Jacob C. Seale, appellant, *vs.* H. B. Holmes, sheriff and *ex-officio* collector of State and parish taxes for the State of Louisiana and parish of Madison. Filed October 21, 1886.

22-6349635

Supreme Court of the United States.

J. C. SEALE, Appellant,

vs. } No. 1238.

H. B. HOLMES, Tax Coll. et al. Appellees,

and

J. C. SEALE, Appellant,

vs. } No. 1237.

THE PARISH OF MADISON, et al. Appelees.

Appeal from United States Circuit Court for the Western District of Louisiana.

BRIEF OF PLAINTIFF AND APPELLANT.

Supreme Court of the United States.

J. C. SEALE, Appellant,

vs. } No. 1238.

H. B. HOLMES, Tax Coll. et al. Appellees,

and

J. C. SEALE, Appellant,

vs. } No. 1237.

THE PARISH OF MADISON, et al. Appelees.

Appeal from United States Circuit Court for the Western District of Louisiana.

BRIEF OF PLAINTIFF AND APPELLANT.

To the Honorable the Judges of the Supreme Court of the United States.

May it please your Honors:

These two suits grew out of the same state of facts and can be best argued together. They were originally filed in the State Court, and removed to the Circuit Court, as suits arising under the Constitution or laws of

ment at the same time should provide for its payment by ordering the assessment and collection of a special tax, sufficient to satisfy the same.

He obtained judgment in the lower Court for $3,-214,52., and no provision for the levy of a tax to satisfy the judgment.

He appealed the case to the Supreme Court of Louisiana, and there obtained judgment for $7,537.41., with legal interest from judicial demand, and no provision for the levy of a tax to satisfy the judgment.

The reasons given by the Supreme Court of Louisiana for its judgment were :

1st.—That the two suits, taken up and tried as test cases, were in point of fact the only ones that were really defended of all those instituted.

That answers were filed in the others, but they seemed to have awaited the issue of those named, and when they were determined the others were not further prosecuted.

2nd.—That plaintiff had no contract within the intendment of the provisions of the Federal Constitution, relating to the impairment of contracts, and that the act of 1869, under which he claimed a provision for the levy of a tax to pay the judgment, had been repealed by the Act of 1877,—Seale vs. Parish of Madison 34 An 265. The plaintiff then applied for a writ of mandamus, which also came before the Supreme Court of Louisiana on appeal, and was refused for the same reasons.

He then abandoned the further prosecution of the suit upon the express agreement of the Police Jury of the parish to pay the amount determined to be due to him by the judgment of the Supreme Court of Louisiana, being the sum of $7,537.40., with five per cent per annum interest, from May 14th 1877.

In pursuance of this agreement, the Police Jury paid $1,000.00 on April 28th 1885, and $5,000.00 on July 16th 1885, leaving then due the sum of $4, 621.45, and the the sum of $90.00 costs.

After these payments the Police Jury refused to make any further payments, or to make any provision for the satisfaction of the judgment, and in the summer of 1885 the State and Parish officers, pretending to be acting in obedience to the Revenue Acts of 1882 and 1884, proceeded to tax the judgment of the plaintiff against the parish, and upon his refusal to pay, caused the judgment to be seized and advertised for sale. The plaintiff then sued out the injunction in the suit of Seale vs. Holmes, Tax Collector, and removed the suit into the Circuit Court in October 1885.

At the beginning of the current year the Police Jury, in gross disregard of the rights of the plaintiff, and of their agreement to pay and satisfy his judgment, proceeded to contract for the building of a Court house and jail, and to appropriate all the proceeds of the general tax, accrued and to accrue, to that purpose, without making any provision whatever for the payment of the debt to plaintiff.

The plaintiff thus found himself with a judgment which, in so far as he could obtain relief from the State Courts, was likely to be confiscated by State and parish taxation, and for the satisfaction of which, by the remedy existing at the time of his contract, he had twice in vain applied to the Supreme Court of the State.

His right to a writ of error from the U. S. Supreme Court, had been allowed to lapse upon the faith of the promise of the Police Jury to pay the judgement, and if he ever had any rights which the State Courts would recognise, he had invoked them in vain.

But this argument, like so many others addressed to this Court, ignores the interpretation which the Court puts upon the words, "a case arising under the the Constitution, or a law of the United States."

In the case of Starin vs. New York, supra, the Court said:

"The character of a case is determined by the questions involved. Osborne vs. Bank of United States, 9 Wheaton 824. If from these questions it appears that some title, right, privilege or immunity, on which the recovery depends, will be defeated by one construction of the Constitution, or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the Act of 1875; otherwise not.

Cohen vs. Virginia,—6 Wheaton 379.
Osborne vs. Bank of U. S. supra.
Mayor vs. Cooper,—6 Wallace 252.
Gold Washing & Water Co vs. Keyes—96 U. S. 201.
Tennessee vs. Davis,—100 U. S. 264.
Railroad Co. vs. Mississippi,—102 U. S. 140.
Ames vs. Kansas,—111 U. S. 462.
Kansas Pacific R. Co. vs. Atcheson,—R. C. 112 U. S. 416.
Prov. Saving L. Ins. Co. vs. Ford,—114 U. S. 641.
Pacific R. R. Removal cases,—115 U. S. 11.

Such being the uniform interpretation, it is apparent that the suggestion that the defendant tax collector might have been acting as a mere trespasser, without warrant or authority of law, is in effect a suggestion that in such case the right claimed by the complainant under the Constitution of the United States, does not extend to protection from the illegal acts of State officers.

But this is in fact a suggestion that the right on which his recovery depends will be defeated by that construction of the Constitution. There are three capacities and only three, in which the defendant could have acted. He could act as a State officer, by virtue of and in obedience to a law of the State. He could act as a State officer, virtute officii, in disregard and violation of the laws of the State. And he could act as an individual, a mere private citizen.

In the first case it would be necessary to aver that the party was acting as a State officer, by the authority of and in obedience to, a State law, and that such law was repugnant to and in conflict with, the provision of the Constitution of the United States.

In the second case it would be necessary to aver, only that the party was acting as a State officer, acting virtute officii, and that his acts as such tended to deprive the complainant of his property without due process of law.

It is not necessary to consider the third case, because it is charged that the defendant was acting as a State officer, acting virtute officii, as collector of State and parish taxes, for the State of Louisiana and Parish of Madison.

Now the right claimed by the complainant, is, that the acts of the State officer are in conflict with the provision of the 14th Amendment to the United States Constitution, because if not restrained, such acts will deprive him of his property without due process of law.

It is urged upon the argument of a motion to remand, that the Court should put that construction upon the provision of the Constitution which would defeat the right upon which his recovery depends. In other words that the Court should so construe the provision of the

14th Amendment, as to confine the protection accorded by it, to persons who are about to be deprived of their property by the acts of a State officer, done in obedience to, and by the authority of, a State law.

And should not put that construction upon the provision, which would sustain the right upon which his recovery depends. In other words, should not so construe the aforesaid provision, as to extend the protection to all cases where persons are about to be deprived of their property by the acts of State officers, who act virtute officii, by the authority and in the name of the State.

But the Court cannot construe the Constitutional provision, and apply its construction to the facts stated in the bill, without taking jurisdiction, and denying the motion to remand.

It is this that properly distinguishes the motion to remand from the general demurrer. Upon the trial of the motion to remand, it is only necessary for the Court to determine whether the right upon which the recovery depends, will be defeated by one construction of the Constiution, or sustained by the opposite construction,

It may be apparent from an inspection of the Record, that the Court will so construe the provision of the Constitution, as to defeat the right upon which the recovery depends, but questions of that character must be presented by demurrer.

In the case of Southern Pacific R. Co. vs. State of California, decided April 26 1886, your honors said: "The right of removal does not depend upon the validity of the claim set up under the Constitution or laws. It is enough if the claim involves a real and substantial dispute or controversy in the suit."

There is but one other provision applicable to such cases, and that is section 639 R. S.

"That if, in any suit commenced in a Circuit Court, or removed from a State Court to a Circuit Court of the United States, it shall appear to the satisfaction of said Circuit Court, at any time after said suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court. * * * * the said Circuit Court shall proceed no further therein, but shall dismiss the suit or remand it to the Court from which it was removed."

By virtue of the authority thus conferred, the Court might, if it appeared to its satisfaction that this suit does not really and substantially involve a dispute or controversy within its jurisdiction, remand the suit to the State Court.

But it cannot well appear in this case that the suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of the Court, because the right upon which the recovery depends will be defeated by one construction of the 14th Amendment, or sustained by the other.

If the Court so construes the provision as to confine it to cases where the State officer is acting by virtue of and in obedience to a State law, the right will be defeated.

If the Court so construes the provision as to extend it to all cases where the State officer is acting, virtute officii, by the authority and in the name of the State, the right will be sustained.

This is sufficient to dispose of the motion to remand, and it should be denied.

But it is most respectfully and most earnestly urged that the construction contended for by defendant's coun-

sel, is not the correct and proper construction of the provision.

A vast majority of the cases in which persons will need to invoke the protection of the provision, will be cases in which the State officers, acting virtute officii, in the name and by the authority of the State, seek to deprive persons of life, liberty, or property, without due process of law?

This makes the distinction between the provision relating to the impairment of contract, and that relating to due process of law.

Section 10 of Article 1, reads:

No State * * * * shall pass any bill of attainder, or ex post facto law, or law impairing the obligation of contracts.

Section 1 of Article XIV, reads:

Nor shall any State deprive any person of life, liberty or property, without due process of law.

The first is a restriction upon the exercise of the law making power, and unless there is some law, organic or statute, there can be no violation of the provision.

But the second is a prohibition addressed to the States, and is directed to the action of the political body, by whatever instrument and in whatever mode that action may be taken. In the case of Ex parte Virginia, 10 Otto 339, this Court said:

"We have said the prohibitions of the 14th Amendment are addressed to the State."

They are; "No State shall make or enforce a law, which shall abridge the privileges or immunities of citizens of the United Staies * * * nor deny to any person within its jurisdiction the equal protection of its laws."

They have reference to the actions of the political body denominated a State, by whatever instrument and in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The Constitutional provision, therefore, must mean that no agency of the State, or of the officers, or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws.

Whoever, by virtue of a public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the Constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State power, his act is that of the State.

This must be so, or the Constitutional inhibition has no meaning. Then the State has clothed one of its agents with power to annul or evade it."

There is no complaint in this suit of the acts of Henry B. Holmes as a private individual, but it is charged that in his capacity of collector of State and parish taxes, for the State of Louisiana and Parish of Madison, acting virtute officii, in the name and by the authority of the State, and clothed with the State's power, he was about to deprive complainant of his property without due process of law.

If, as so frankly stated by his counsel on the argument of the motion to remand, he has been advised and knows that his acts were illegal, his conduct in persisting is all the more flagrant.

It is no answer to the complaint to say that the State Court could afford to the complainant all the relief which he seeks here.

He was unwise enough at one time to believe that the judicial power of the State would secure to him the exercise and enjoyment of his rights, and it is because of that misplaced confidence he is now compelled to seek the protection of the Constitution and Laws of the United States in this Court.

It is respectfully submitted that the averments of the original bill, are sufficient to have entitled the complainant to the removal.

See—

County of San Mateo vs. Pac. R. 13 Fed. Rep. 145.
Railroad Tax Cases, 13 Fed. Rep. 722.
County of Santa Clara vs. Pac. R. 18 Fed. Rep. 385.
Cincinnati Southern R. vs. Granther, 19 Fed. Rep. 395.

II.

It was stated in the argument that the object of offering the amended bill, was to have the issues in this suit conformed to those submitted to the United States Supreme Court in the case of Murray vs. Charleston.

In the original bill it is charged that the acts of the defendant tax collector, were repugnant to and in violation of the provision of the 14th Amendment, that no State shall deprive any person of property without due process of law.

In the amended bill it is further charged that the Revenue Acts of the State of Louisiana, and the ordinances of the Police Jury of the Parish of Madison, made in pursuance thereof, in obedience to which the defendant pretends to be acting, are in conflict with the provision of the United States Constitution, that no State shall pass any law impairing the obligation of contracts. The object of the amendment was to set out the facts more specifically, to make the assessor, and parish

officers, parties to the bill, and to show that the proceedings complained of were not due process of law, because they were had in pursuance of a State law which impaired the obligation of complainant's contract.

In the case of Osborn vs. Nicholson, 13 Wallace 604, this Court said:

"The doctrine of the repeal of statutes, and the destruction of vested rights by implication, are alike unfavored in the law.

Neither is to be admitted unless the implication is so clear as to be equivalent to an explicit declaration. Every doubt should be resolved against a construction so fraught with mischiefs.

There is nothing in the amendment which in the slightest degree warrants the inference that those who framed, or those who adopted it, intended that such should be its effect. It is wholly silent upon the subject. The proposition, if carried out in this case, would, in effect, take away one man's property and give it to another, and the deprivation would be without due process of law. This is forbidden by the fundamental principles of the social compact, and is beyond the sphere of legislative authority, both of the State and of the Nation."

This passage has been cited merely to show that the terms impairment of contract, divestiture of vested rights, and due process of law, bear a certain relation to each other, and that a law which impairs the obligation of a contract, or divests vested rights, like a law that takes private property for public use "without compensation," in effect takes away one man's property and gives it to another, and is a deprivation without due process of law.

The general averment of the original bill would have been sufficient, for the purpose both of jurisdiction

and relief, but it was considered better to make the more specific averments.

It is objected that the amendment cannot be allowed for the purpose of disclosing the jurisdiction of the Court, which is to be determined by the averments of the original bill filed in the State Court.

This argument has been addressed to this Court time and again, and deserves a very serious consideration, for the reason that the State Court could not be required to relinquish its jurisdiction, and proceed no further in the case, until a record was presented conforming to all the requirements of the Removal Acts.

It is conceded that formal defects may be waived, or cured by amendment, but it is contended that the jurisdictional facts must be stated in the record, and if not so stated cannot be set up by amendment in this Court." There is no authority for this contention to be found in the Acts of Congress, or in the rules and practice of the Circuit Court.

The same reasoning which applies to the record in the State Court, applies as well to the formalities required by the Removal Acts, as to the jurisdictional facts.

The State Court cannot be required to relinquish its jurisdiction, unless the jurisdictional facts are stated in the record, but equally the State Court cannot be required to relinquish its jurisdiction unless the formalities prescribed by the Removal Acts are complied with.

The Circuit Court is a court of limited or special jurisdiction, and for that reason the jurisdictional facts must appear affirmatively on the record, but it has never been held that such facts, where necessary, could not be set up by amendment.

In this case it is not proposed to set up any new facts, but a legal consequence deduced from the same facts.

In the original bill it was charged that the proceedings of the tax collector, were not due process of law.

In the amended bill it is added that the Revenue Acts of the State, and the ordinances of the Police Jury, in obedience to which he pretends to have acted, impair the obligations of complainant's contract.

In the original bill it is not charged that he was acting neither in obedience to, nor in violation of, the laws of the State.

In the amended bill it is charged that the laws of the State, in obedience to which he is acting, or pretending to act, impair the obligation of a contract.

To impair the obligation of a contract, is in effect, to deprive a person of his property without due process of law.

But no reason can be percieved, beyond that already stated, why amendments should not be allowed, and if they are allowed for one purpose, there is no reason why they should not be allowed for all purposes.

The rule is thus stated by Desty in his work on Federal Procedure, 6th Edition, p. 228: "The record, including the petition, must show jurisdiction in the Circuit Court, and any omission not afterwards supplied is cause for a remand; but if the proceedings are so amended as to remove all objection, the cause will not be remanded."

The doctrine is thus stated by this Court, in the case of Gold Washing and Water Co. vs. Keyes, 6 Otto, 199:

"It is well settled that in the Courts of the United States, the special facts necessary for jurisdiction must,

in some form, appear in the record of every suit, and that the right of removal from the State Courts to the United States Courts is statutory. A suit commenced in a State Court must remain there until cause is shown, under some act of Congress, for its transfer. The record in the State Court, which includes the petition for removal, should be in such a condition when the removal takes place, as to show jurisdiction in the Court to which it goes. If it is not, *and the omission is not afterwards supplied*, the suit must be remanded."

In the still later case of Ayers vs. Watson, 113 U. S., 594, when this whole question was thoroughly discussed, this Court said:

"We see no reason, for example, why the other party may not waive the required bond, or any informalities in it, or informalities in the petition, provided it states the jurisdictional facts; and if these are not properly stated, there is no good reason why an amend- should not be allowed, so that they may be properly stated."

If the jurisdictional facts were not properly stated in the original bill, it is respectfully submitted that there is no good reason why the amendment should not be allowed, so that they may be properly stated.

III.

The supplemental bill states all the facts fully and in detail, and avers the legal conclusion, that the Revenue Acts of the State of Louisiana for the years 1882 and 1884, and the ordinances of the Police Jury of the Parish of Madison, made in pursuance thereof, in so far as they seek to subject the judgement of complainant against the parish, to State and parish taxation, are repugnant to and in conflict with section 10, article 1 of

the United States Constitution, that no State shall pass any law impairing the obligation of contract.

As was said in argument, the object in filing the supplemental bill, was to have the issues in this cause conform to the issues in the case of Murray vs. Charleston, 98 U. S., 432.

The same issues were presented to the Court in the Eastern district, in the cases of De Vignier vs. City of New Orleans, and Folsom Bro. vs. same, reported in 16 Fed. Rep., p. 11.

In that case the Court said:

"In Railroad Company vs. Pennsylvania, 15 Wallace, 300; Murray vs. City of Charleston, 96 U. S., 432, and Hartman vs. Greenham, 102 U. S., 672, the Supreme Court of the United States has settled, among other propositions of law, the two following, which apply to these cases. 1st. That the exercise of the power of taxation by municipal corporations, is such an act of legislation that if it impairs the obligation of a contract it is within the prohibition of article 1, section 10, that no State shall pass a law impairing the obligation of a contract.

It can hardly be doubted but what the status of obligations, so far as relates to exemption from taxation before suit, would continue after suit; otherwise the debtor, by making default in the performance of his contract, would cast an additional burden upon the creditor, and cause a subtraction from the amount due."

The Court, however, prefered to rest its decision upon the other ground, and added:

"It is not necessary in these cases to consider the question of the power of the city to tax the debts which

it owes, to those who reside within it, whether they are represented by bonds or exist in judgments."

This caution was very necessary, because the United States Supreme Court in the case of Murray vs. Charleston, 6 Otto, 432, had prefered to rest its decision upon the first ground, that the law impaired the obligation of the contract, and said:

"The obligation of a contract depends upon its terms and the means which the law in existence at the time affords for its enforcement.

A law which alters the terms of a contract, by imposing new conditions, or dispensing with those expressed, is a law which impairs its obligation; for such a law * * * relieves the parties from the moral duty of performing the original stipulations of the contract, and it prevents their legal enforcement." What was thus said, it is true, was in a case where the question was, whether a tax thus imposed upon a non-resident holder of bonds, issued by a company chartered by the State, was warranted by the Constitution. But so far as it speaks of what constitutes impairing the contract obligation, it is applicable in its fullest extent, to all legislation affecting contracts, no matter who may be the parties. We do not care now to enter upon the consideration of the question whether a State can tax a debt due by one of its citizens, or municipalities, to a non-resident creditor, or whether it has any jurisdiction over such a creditor, or even the credit he owns. Such a discussion is not necessary, and it may be doubtful whether the question is presented to us by this record.

It is enough for the present case that we hold, as we do, that no municipality of a State can, by its own ordi-

nances, under the guise of taxation, relieve itself from performing to the letter all that it has expressly promised to its creditors.

There is no more important provision in the Federal Constitution than the one which prohibits States from passing laws impairing the obligation of contracts, and it is one of the highest duties of this Court to take care the prohibition shall neither be evaded nor frittered away.

Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are foundations of all well ordered society, and to prevent the removal or disturbance of these foundations, was one of the great objects for which the Constitution was framed."

The complainant's case is a far stronger one than the above.

He was a public officer, and entitled by law as a part of the salary, and fees, and emoluments of his office, to a commission of five per cent on the amount, for defending any suit in which the parish was defendant, R. S. 1186. He defended successfully all the suits brought against the parish, relieved it of an indebtedness which would have bankrupted the property holders, and fairly earned his fees, amounting to $34,388.00, of which he had recieved only $5,400.00.

By the law in existence at the time of his appointment and services, and which entered into and formed a part of his contract, he was entitled to a judgment against the parish for the amount of his fees, with an order to the board of assessors or parish officers, whose duty it was to assess taxes, forthwith to assess a parish

tax at a sufficient rate per cent upon the assessment roll of the year to pay and satisfy the judgement, with interests and costs, R. S. 2628. As a public officer, the salary, and fees, and emoluments of his office were exempt from State and parish taxation.

The first impairment of his contract was the repeal of the Act of 1869, Sec. 2628, R. S., by the Act of 1877.

The second impairment was by the decree and judgment of the Supreme Court of Louisiana.

1st.—That because two of the suits only were actually tried, as tests cases, according to the practice of the Court, the others were not defended, although answers were filed, and they awaited the issue of the two named, and when they were determined, were not further prosecuted.

2nd.—That complainant had no contract with the parish within the intendment of the provision of the Federal Constitution.

The third impairment was by the judgment and decree of the Supreme Court of the State rejecting his prayer for a peremptory mandamus.

The fourth impairment was by the Revenue Acts of 1882 and 1884, subjecting to taxation all judgments, suits, and causes in action.

He thus finds himself, years after the termination of his services, and after having exhausted every effort to obtain the payment of his debt, with a judgment against the parish which he cannot execute by any process of State law, and which he sees being gradually confiscated by State and parish taxation.

If the Circuit Court, as a Court of Equity, especially charged with the duty of interpreting and administering

the Constitution and Laws of the United States, is powerless to entertain jurisdiction and afford relief in such a case, then, as said by the Supreme Court in Ex parte Virginia, the Constitutional provision has no meaning, and the State has clothed its agents with power to annul or evade it.

See—Sawyer vs. Concordia, 12 Fed. Rep. 754.

U. S. ex rel Watson vs Mobile, Fed. Rep. 768.

In the case of Seale vs. Parish of Madison et al, these questions of law are presented.

1st.—Does the Act of 1877, repealing the Act of 1869 providing for the levy of a tax to satisfy the judgment, impair the obligation of the contract between complainant and Parish of Madison?

2nd.—Does the judgment and decree of the Supreme Court of Louisiana, that only two of the suits were actually defended, within the contemplation of Sec. 1186 R. S., because according to the practice of the Court, only two were taken up and tried as test cases, while the others awaited the issue, and when these two were determined, were no further prosecuted, impair the obligation of complainant's contract?

3rd.—If such judgment was not simply erroneous, but was apparently rendered in wilful and wanton disregard of the law and the facts, is such judgment void and not due process of law?

4th.—Does the judgment of the Supreme Court of Louisiana that complainant had no contract with the Parish of Madison, within the intendment of the provision of the Federal Constitution, impaired the obligation of complainants contract with said parish?

5th.—If such judgment and decree of the Supreme Court of Louisiana has impaired the obligation of such

contract, what is the effect of such judgment? Is such judgment merely erroneous, and to be reviewed only on writ of error from the United States Supreme Court, or is it a void judgment?

6th.—If a judgment of a State Court, conflicts with a provision of the Constitution of the United States, because the State Court was without jurisdiction ratione materiae, or ratione personae, or because the Court has transcended the powers conferred upon it by law, or because it has deprived a person of life, liberty or property, without due process of law, or because it has impaired or destroyed the obligation of a contract, or because rendered in wanton and wilful disregard of the law and the facts, or for any other reason, is it necessary to prosecute a writ of error from the Supreme Court of the United States, to obtain relief from such void judgment?

7th.—If the judgment of the Supreme Court of Louisiana, fixing and determining the amount of the indebtedness by the Parish of Madison to complainant, and denying his prayer for the the levy of a special tax to satisfy the judgment, is final and res adjudicata, because of the failure of complainant to prosecute a writ of error, and complainant was induced to abandon the prosecution of such writ, to obtain the relief which he would have obtained in the United States Supreme Court, by the express promise and agreement of the Police Jury of the Parish of Madison to pay and satisfy the amount determined to be due by the judgment of the Supreme Court of Louisiana, can the Circuit Court, as a Court of Equity, decree a specific performance of the promise and agreement of the Police Jury to pay and satisfy the indebtedness, upon being shown that complainant has no plain, complete, and adequate remedy at

law, or afford to him such other and general relief, as equity, and the nature and circumstances of the case may require?

I.

These questions are all Federal questions, arising under the Constitution and Laws of the United States, since it appears that the title, right, privilege, or immunity on which the recovery depends, will be defeated by one construction of the Constitution, or sustained by the opposite construction, and what has been said before of the jurisdiction of the Court, applies equally to this case.

There is not a question involved in either case which does not arise under the Constitution or laws of the United States, and require a construction which will defeat, or sustain, the right on which the recovery depends.

The prayers of the petition are in the alternative; to have the judgment and decree of the Supreme Court of Louisiana declared void in toto, and a recovery on the original cause of action; to have the judgment and decree declared void, in so far as it puts upon the Act of 1877, a construction which impairs the obligation of complainant's contract by taking away the remedy which existed at the time of the contract, and a recovery for the amount determined to be due by the said judgment, with a provision for the levy of a special tax; to have a decree for a specific performance by the Parish of the promise and agreement by the Police Jury to pay and satisfy the debt, in consideration of which complainant abandoned the prosecution of a writ of error, either by the levy of a special tax, or by a payment from the proceeds of the general tax, accrued or to accrue. **And for general relief in the premises."**

The real difficulty in the case consists in the fact that the petition was framed according to the practice of the State Courts, and contains prayers for relief which embody remedies at law as well as in equity.

In the Circuit Court there can be no relief in equity when there is a plain, complete and adequate remedy at law.

If the judgment and decree of the Supreme Court of Louisiana is wholly void, the plaintiff can declare on the original contract on the law side of the Court, and must seek his remedy there.

If it is void in part only, in so far as it has impaired the obligation of the contract by taking away the remedy by the levy of a special tax, which existed at the time ot the origin of the contract, the plaintiff can sue at law on the judgment, and must pursue that remedy, Freeman on judgments, Section 432.

If however the judgment and decree of the Supreme Court of Louisiana is not void, but final and res adjudicata, the only remedy which the plaintiff can have is in equity. To this relief, and in fact to any relief at all in this Court, it is indispensible, a condition precedent, that the judgment and decree of the Supreme Court of Louisiana shall be shown to have been either void or erroneous; for if the plaintiff had, as decided, no contract with the Parish of Madison, within the intendment of the provision of the Federal Constitution, the prosecution of the writ of error would have availed him nothing, and the promise of the Police Jury to pay and satisfy the judgment, would be a mere nudum pactum, an agreement without any valid consideration.

It must be shown affirmatively that plaintiff did have a contract which was protected by the provision of the Federal Constitution, and that the construction put

by the Supreme Court of Louisiana upon his said contract was void, or erroneous, and would have been reversed on writ of error from the United States Supreme Court.

According to the practice of the Circuit Court, the suit having been removed from the State Court, the pleadings can be reformed, and conformed to the practice of the Court, under the direction of the presiding judge.

I.

That the plaintiff did have a contract which came within the intendment of the provision of the Federal Constitution, and that such contract was impaired by the Act of 1877, repealing the Act of 1869, and taking away the remedy by the levy of a special tax for the payment of the judgment, and by the judgment of the Supreme Court of Louisiana denying to him all benefit and advantage of such remedy, has been settled by the opinions of this Court in the case of Fisk vs. Police Jury of Jefferson, filed December 21st, 1885, and reported on p. 329-6 U. S. S. C. Rpt., in which the Court said:

"In answer to the argument that, as applied to plaintiff's case, the Constitutional provision impaired the obligation of his contract, the Supreme Court decided that his employment as attorney for the parish, did not constitute a contract, either in reference to his regular salary, or to his compensation by fees. And this question is the only one discussed in the opinion, and on that ground the discussion rested.

It seems to us that the Supreme Court confouned two very different things in their discussion of this question. We do not assert the proposition that a person elected to an office for a definite term, has any

such contract with the government, or with the appointing body, as to prevent the legislature or other proper authority from abolishing the office, or diminishing its duration, or removing him from office.

So, though, when appointed, the law has provided a fixed compensation for his services, there is no contract which forbids the legislature or other proper authority, to change the rate of compensation for salary or services after the change is made, though this may include a part of the term of the office then unexpired.

Butler vs. Pennsylvania, 10 Howard 402.

But after the services have been rendered under a law, resolution or ordinance which fixes the rate of compensation, there arises an implied contract to pay for these services at that rate.

This contract is a completed contract. The obligation is perfect, and rests on the remedies which the law then gives for its enforcement.

The vice of the argument of the Supreme Court of Louisiana, is in limiting the protecting power of the Constitutional provision against impairing the obligation of contracts, to express contracts, to specific agreements, and in rejecting that much larger class, in which one party having delivered property, paid money, rendered services, or suffered loss at the request of or for the use of another, the law completes the contract by implying an obligation on the part of the latter to make compensation.

This obligation can no more be impaired by a law of the State, than that arising on a promissory note."

It being determined that the plaintiff did have a contract within the intendment of the provision of the Constitution, and that his contract was impaired by the

Act of 1877, repealing the Act of 1869, and taking away the remedy by the levy of a special tax for the payment of his judgment, the questions propounded remain to be answered, and as they are questions which require the interpretation and construction of the Constitution of the United States, he has a right to a hearing in the Federal Courts.

It may be that the claim set up by him is not valid, and that the Courts are powerless to give him any relief in the premises.

It may be that the judgment of the Supreme Court of Louisiana, although erroneous, is not void, and that his only remedy was by a writ of error from your Honorable Court.

It may be that the defendant parish can repudiate the agreement of compromise, by which the plaintiff was induced to abandon the prosecution of his writ of error, and can plead the judgment as res adjudicata in bar of an action on the original contract.

It may be that a Court of Equity is powerless to compell a specific performance, or to decree the rescission of the contract of compromise, and to restore to the plaintiff what he has lost by his performance.

It may be that the defendant corporation is not estopped by the acts and contracts of its agents, and that in repudiating their acts, and refusing to perform the agreement of compromise, it can be allowed to keep the fruits of the plaintiff's performance in the abandonment of his right to the writ of error.

If so, the plaintiff is left without a remedy, but none the less he has a right, a substantial right, arising under the Constitution and Laws of the United States, and

was entitled to the removal of the suits and a hearing in the Circuit Court.

The learned Judges of the Circuit Court seem to have proceeded upon the theory that a motion to remand unites the elements of a general demurrer, and special plea, and goes to the merits of a controversy.

It is respectfully submitted that the judgments remanding the suits to the State Court should be reversed, and that the plaintiff should be allowed to reform his pleadings, and seek such relief as the Honorable Circuit Court can give him.

WADE R. YOUNG,
Of Counsel.

S. Prentiss Smith
Attorney for Plaintiff & Appellant

Supreme Court of the United States.

J. C. SEALE, Plaintiff and Appellant,

vs. *No. 1238.*

H. B. HOLMES, Sheriff and Tax Collector, Et Al.,
Defendants and Appellees.

Appeal from the United States Circuit Court for the Western District of Louisiana.

BRIEF OF DEFENDANTS, APPELLEES.

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This is an appeal taken by plaintiff from a judgment of the United States Circuit Court for the Western District of Louisiana, sustaining a motion filed by defendants to remand said cause to the State Court in which it was originally filed.

Plaintiff sets forth in his petition—That he is the owner of a certain judgment against the Defendant Parish of Madison for personal services and fees of office. That the Defendant Police Jury, through the machinery of assessment and taxation, has caused to be levied a tax on plaintiff's judgment, and that Defendant Sheriff and ex-officio Tax Collector has seized and advertised said judgment for sale to pay said taxes. That the

action of the Parish of Madison and the authorities who assessed, levied and are attempting to collect said taxes is spoliation and oppression, and an attempt to repudiate the obligations of the parish by taxation and is in conflict with the XIVth Amendment to the Constitution of the United States—being an attempt to deprive petitioner of his property without due process of law. That the assessment and levy of said tax on said judgment is illegal, null and void—said judgment being based on compensation for personal services rendered the parish by plaintiff as an officer of the State and therefore not liable for taxation either by the Parish or State. That neither the State nor the parish has any power, right or authority of law to levy a tax upon said judgment, same being for the balance of plaintiff's salary and the fees and emoluments of his office, and that said assessment and levy, and the proceedings had in pursuance thereof are an attempt by said State and Parish to confiscate said indebtedness and to deprive petitioner of his property without due process of law in violation of said amendment. That said proceedings are illegal, null and void and in violation of said XIVth Amendment for the reason that the Constitution and laws of the State of Louisiana require that all taxation shall be equal and uniform, and that the officers and agents in violation of said provisions have assessed said judgment at its full face value, while other property in said parish is assessed at only one-third or one-half of its actual cash value, and that no legal notice to pay said taxes had ever been served upon him.

The petition closes with prayer for writ of injunction, which was granted by the State Court, and no further proceedings were had by the Sheriff; and it is clear that under the allegations of plaintiff's petition, the State Court will perpetuate the injunction as soon as reached (as in fact, though not shown by the record, it has since done) so the only real controversy

involved is over the costs of removal and the costs of this appeal.

After the filing of this cause in the State Court, plaintiff filed an application and bond to remove the same into the Circuit Court of the United States for the Western District of Louisiana, on the ground that it was an injunction restraining the defendant tax collector from depriving petitioner of his property without due process of law in violation of the XIVth Amendment to the Constitution of the United States. Defendants then filed in the United States Circuit Court a motion to remand said cause, on the ground that the Circuit Court was without jurisdiction to try and determine the issues involved in said cause, it being a controversy entirely between citizens of the State of Louisiana and not a case arising under the Constitution and laws of the United States. The motion was tried and sustained, and the case is now before this Honorable Court on appeal taken by plaintiff from the judgment of the Circuit Court ordering that said cause be remanded to the State Court.

The petition does not allege that the defendants were acting under authority of any law of the State violating any of the provisions of the Federal Constitution, but on the contrary it alleges that their acts in the premises were unauthorized, null and void, and contrary to the provisions of the Constitution and laws of the State. Taking plaintiff's allegations as true, the two questions for decision are:

First—Whether or not a suit entirely between citizens of the same State, brought in the State Court of the parties' domicile to enjoin the commission of acts unauthorized by and in violation of the Constitution and laws of the State, can be removed to the Federal Court on the allegation that the acts complained of are also in violation of the Constitution of the Unitad States.

Second—Whether or not after suit brought in the State

Court and after application and bond for removal, after filing of the transcript by plantiff and of motion to remand by defendants in a Circuit Court of the United States and after argument of said motion, plaintiff will be permitted to file in that court a supplemental bill for the purpose of making it at that stage of the proceedings and for the first time since its institution a cause removable, and in order to do which it would be necessary in the instant case to contradict in the amended the solemn judicial statements and admissions made in the original bill.

It is respectfully urged that there is no room for discussion upon either of these propositions, and that the State Court had the sole and exclusive jurisdiction of the case as originally brought, and that the cause, if removed at all, was removed by the filing of the petition and bond in the State Court. That this not being as it then stood a removable cause, it could not be made so by supplemental bill offered after argument of the motion to remand in the United States Court.

Wherefore, defendants pray that the judgment appealed from be affirmed.

Respectfully submitted, F. Murphy and
STONE & MURPHY,
of Counsel for Defendants, Appellees.

Supreme Court of the United States.

J. C. SEALE, Plaintiff and Appellant,

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action of the Parish of Madison and the authorities who assessed, levied and are attempting to collect said taxes is spoliation and oppression, and an attempt to repudiate the obligations of the parish by taxation and is in conflict with the XIVth Amendment to the Constitution of the United States—being an attempt to deprive petitioner of his property without due process of law. That the assessment and levy of said tax on said judgment is illegal, null and void—said judgment being based on compensation for personal services rendered the parish by plaintiff as an officer of the State and therefore not liable for taxation either by the Parish or State. That neither the State nor the parish has any power, right or authority of law to levy a tax upon said judgment, same being for the balance of plaintiff's salary and the fees and emoluments of his office, and that said assessment and levy, and the proceedings had in pursuance thereof are an attempt by said State and Parish to confiscate said indebtedness and to deprive petitioner of his property without due process of law in violation of said amendment. That said proceedings are illegal, null and void and in violation of said XIVth Amendment for the reason that the Constitution and laws of the State of Louisiana require that all taxation shall be equal and uniform, and that the officers and agents in violation of said provisions have assessed said judgment at its full face value, while other property in said parish is assessed at only one-third or one-half of its actual cash value, and that no legal notice to pay said taxes had ever been served upon him.

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involved is over the costs of removal and the costs of this appeal.

After the filing of this cause in the State Court, plaintiff filed an application and bond to remove the same into the Circuit Court of the United States for the Western District of Louisiana, on the ground that it was an injunction restraining the defendant tax collector from depriving petitioner of his property without due process of law in violation of the XIVth Amendment to the Constitution of the United States. Defendants then filed in the United States Circuit Court a motion to remand said cause, on the ground that the Circuit Court was without jurisdiction to try and determine the issues involved in said cause, it being a controversy entirely between citizens of the State of Louisiana and not a case arising under the Constitution and laws of the United States. The motion was tried and sustained, and the case is now before this Honorable Court on appeal taken by plaintiff from the judgment of the Circuit Court ordering that said cause be remanded to the State Court.

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Court and after application and bond for removal, after filing of the transcript by plantiff and of motion to remand by defendants in a Circuit Court of the United States and after argument of said motion, plaintiff will be permitted to file in that court a supplemental bill for the purpose of making it at that stage of the proceedings and for the first time since its institution a cause removable, and in order to do which it would be necessary in the instant case to contradict in the amended the solemn judicial statements and admissions made in the original bill.

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Respectfully submitted, H. Murphy and
STONE & MURPHY,
of Counsel for Defendants, Appellees.

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The petition does not allege that the defendants were acting under authority of any law of the State violating any of the provisions of the Federal Constitution, but on the contrary it alleges that their acts in the premises were unauthorized, null and void, and contrary to the provisions of the Constitution and laws of the State. Taking plaintiff's allegations as true, the two questions for decision are:

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It is respectfully urged that there is no room for discussion upon either of these propositions, and that the State Court had the sole and exclusive jurisdiction of the case as originally brought, and that the cause, if removed at all, was removed by the filing of the petition and bond in the State Court. That this not being as it then stood a removable cause, it could not be made so by supplemental bill offered after argument of the motion to remand in the United States Court.

Wherefore, defendants pray that the judgment appealed from be affirmed.

Respectfully submitted, F. Murphy and
STONE & MURPHY,
of Counsel for Defendants, Appellees.

122-635

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1883.

THE WINTHROP IRON CO. et al.,
Appellants,

versus

ARTHUR B. MEEKER, et al.,
Appellees.

BRIEF

On Motion to Dismiss Appeal.

L. D. NORRIS,
GRAND RAPIDS, MICH.
Of Counsel.

FREDERIC ULLMANN,
CHICAGO, ILLS.
For Appellees.

M. D. KIMBALL, PRINTER, 159 LA SALLE ST., CHICAGO.

SUPREME COURT OF THE UNITED STATES

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Appellants,

versus

ARTHUR B. MEEKER, et al.,
Appellees.

BRIEF ON MOTION TO DISMISS APPEAL.

The bill in this case sets forth:

1st. That the Winthrop Iron Company is a corporation, organized in 1871, for the purpose of carrying on the business of mining; that it owns a valuable mine in the county of Marquette, in the State of Michigan; that its capital stock is $500,000.00 divided into 20,000 shares of $25 each.

2nd. That on the 1st day of October, 1871, and for a long time prior thereto, the estate of one A. D. Reed owned 9,999 shares of the stock, but it was held in the names of Mary P. Reed, Mrs. Mary Belle Carpenter, Mrs. A. D. Reed, and Mrs. A. D. Reed, trustee.

3rd. That the other shares were owned in the following manner: A. C. Reed, 201 shares; Harriet Colwell, 856 shares; George A. St. Clair, 1,588 shares; Eugene G. St. Clair, 10 shares; Arthur B. Meeker, 2,950 shares;

William L. Brown, 50 shares; T. B. Brooks, 500 shar
that A. C. Reed was the President and J. M. Chapma
the Secretary of the company.

4th. That the defendants James O. St. Clair, Eu
gene G. St. Clair, George A. St. Clair and Julius N. St.
Clair, are brothers residing at Ishpeming, Michigan, and
are partners in various kinds of business under the firm
name of St. Clair Brothers, and have been so for many years,
and that as such partners they own the stock standing in
the names of George A. and Eugene G. St. Clair. That on
the 2d day of August, 1877, the Winthrop Iron Company
executed to this firm of St. Clair Brothers, a lease of its
mine for five years from the 14th day of December, 1877,
at a royalty of fifty cents per ton upon all ore that should
be taken from the mine.

5th. That on the 9th day of August, 1877, the St.
Clair Bros., together with H. J. Colwell and Harriet P.
Colwell organized a corporation called the Winthrop
Hematite Company for the purpose of mining, smelt-
ing, etc.

6th. That all the stock of the Winthrop Hematite
Company, except a portion thereof taken by the said
Colwells, was taken by the St. Clair Bros., and shortly
afterwards they bought out all the interest of said Col-
wells in said company, and have ever since owned all the
stock of the Hematite Company.

7th. That the Hematite Company was organized for
the purpose of operating the Winthrop mine under the
lease executed by said Company to the St. Clair Bros.,
and on the 22d day of August, 1877, the St. Clair Bros.
assigned said lease to the Hematite Company.

9th. The Hematite Company has, since its organi-
zation, operated the Winthrop mine under the lease; has
taken out large quantities of ore; has paid to the Win-

throp Company large royalties, so that up to a late period the stock of the Winthrop Iron Company was a valuable and income-paying stock, and the amount of the royalties paid by the Hematite Company was divided among the stock holders of the Iron Company annually or semi-annually at regular intervals. That no dividend, however, was declared for the six months ending July 15th, 1881.

10th. That during the summer of 1881 the St. Clair Bros. conceived the idea of so manipulating the affairs of the Winthrop Iron Company as to make the same profitable to themselves and render the stock of no value whatever to the others, and with this fraudulent purpose, they began purchasing the stock of the Iron Company until they had become the owners of 12,654 shares thereof, being a majority of the whole, but such shares were not transferred to them upon the books of the company, but remained standing in the names of the persons from whom they had purchased the same.

That while thus situated they caused a petition to be drawn up and sent by the persons from whom they had thus purchased the stock, to A. C. Reed, President, for the purpose of calling a special meeting of the stockholders for the purpose of acting upon the following propositions:

First. The removal of the general offices of the company from Chicago to Ishpeming.

Second. The election of officers and directors to fill vacancies which might occur.

Third. To make necessary improvements at the mine.

Fourth. To authorize an extension of, and changes in, the lease to the Hematite Company.

Fifth. Such business as should legally come before such meeting.

That the said A. C Reed having previously sold the stock, signed the said notice and caused it to be mailed to some or all of the stockholders. That on the first day of October, 1881, an alleged meeting of the stockholders of the company was held by virtue of said notice, and a copy of the record of that meeting is annexed to the bill. The only persons present at said meeting were Eugene G. St. Clair, his attorney William S. Harbert, and one J. B. Breese who acted as secretary, the last two having no interest in the company but representing some of the St. Clair stock. At this meeting Mary P. Reed, A. C. Reed and J. M. Chapman, were, by resolution, removed from office as directors, and on motion of Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair and James O. St. Clair, were elected directors in their places. A resolution was adopted that the Board of Directors be authorized and directed forthwith to proceed with work on a deep shaft at the mine, said shaft to be located and the work done under the direction of the board, one of their number to have full charge of the work, and to be recompensed for his services by the board. A resolution was also adopted that the revenues of the company, not exceeding $50,000, be devoted to the purpose of sinking the deep shaft, and in case of necessity, the Board of Directors should levy an assessment upon all stock for the purpose of raising funds therefor; and the Board of Directors were authorized and directed to execute a new lease of the said mine to the Winthrop Hematite Company, which should contain substantially, as near as might be, the same conditions and provisions contained in the lease under which the Hematite Company was then operating, except as modified by the said resolution; said new lease to run for the period of eighteen years from the expiration of the existing lease; royalty to be paid

under the new lease to be twenty-five cents per ton instead of fifty cents as specified in the current lease.

Another resolution was adopted removing the offices of the company from Chicago to Ishpeming.

These resolutions, the bill avers, were but the carrying out of the fraudulent purpose already mentioned and a part of the scheme of the St. Clair Bros. to render the stock of the complainants valueless.

The bill charges that the resolution authorizing the sinking of the deep shaft was entirely in the interest of the lessee, as it devoted the revenues of the Iron Company to that purpose; that the royalty of fifty cents per ton specified in the original lease was a very low and inadequate royalty in view of the present demand for, and price of, pig iron, although it was a fair royalty in 1877 when the lease was executed; that the rate specified in the new lease of twenty-five cents per ton is a ruinous and fraudulent rate and a fair royalty world be seventy-five cents per ton, and an offer by one Robert M. Cherrie was attached to the said bill offering to pay such royalty.

11th. It is charged that the Hematite Company was only chartered to exist for the space of six years from the 9th day of August, 1877, and therefore could not accept a lease running for the period of eighteen years.

12th. That the Iron Company under its charter could only exist for eighteen years after the expiration of the existing lease, and that the execution of the lease for that space of time was an attempt on the part of St. Clair Bros. to render the stock of the Iron Company valueless and non-income paying for the full life of the company.

13th. That the books, records and papers of the company have been removed by the St. Clair Bros. to a bank at Ishpeming owned by them.

15th. That the stock of the Iron Company is fully paid, and the authority given to the Board of Directors

to make assessments is illegal.

14th. That all the proceedings of the St. Clair Bros. from the time of the purchase of the controlling interest in the said stock up to and including the meeting, constituted a fraudulent conspiracy whereby they hoped to reap all the benefit to be derived from the ownership of said mine.

Attached to the bill are,

1st. A certified copy of the articles of association of the Winthrop Iron Company.

2d. A copy of the lease from the Winthrop Iron Company to St. Clair Bros.

3d. A certified copy of the articles of association of the Winthrop Hematite Company.

4th. The assignment of the lease by the St. Clair Bros. to the Winthrop Hematite Company.

5th. A copy of the proceedings of the meeting of October 1st, 1881.

This bill was filed by Arthur B. Meeker, William L. Brown and T. B. Brooks, stockholders in the Winthrop Iron Company against that company, the Winthrop Hematite Company and the St. Clair Bros. on behalf of themselves and all other stockholders who might come in, etc., praying,

1st. That the proceedings of the meeting of October 1st, 1881, be decreed fraudulent, null and void.

2d. That the St. Clairs might be removed from office as directors of the Iron Company.

3d. That the Iron Company, its directors, officers and servants might be enjoined from proceeding with work on the deep shaft, and from paying out money therefor, and from making any assessment on the stock for the purpose of raising funds therefor.

4th. That the Iron Company, its officers, etc., be restrained and enjoined from executing the new lease to the Winthrop Hematite Company.

5th. That until the final hearing a temporary injunction should be issued.

6th. That a receiver might be appointed to take charge of the property, with the usual powers of receivers in such cases.

7th. For general relief.

The answer of the defendants—

1st. Admits the organization of the Iron Company as stated in the bill.

2d. Denies that on the 1st day of October, 1881, the estate of A. D. Reed owned the stock mentioned in the bill but admits that it did own it on and up to the 12th day of September preceding.

3d. Admits that prior to September 7th, 1881, A. C. Reed held stock in the company, and that the ownership of the balance of said stock was substantially as stated in the bill, and that A. C. Reed was the president, and J. M. Chapman was the secretary of the company as alleged.

4th. Admits that the St. Clair Bros. had been in partnership and took the lease from the Iron Company as partners, but that since 1877 the partnership had not existed, although the brothers had been engaged together in various enterprises.

5th. Admits that the Hematite Company was organized as stated in said bill.

6th. Admits that the St. Clair Bros. owned all the stock of the Hematite Company, but denies that they own it as partners.

7th. Admits that the Hematite Company was or-

ganized to operate the Winthrop mine under the lease, and that the lease was assigned to that company.

9th. That under the lease the Hematite company has paid royalties and that dividends have, from time to time, been declared, and that no dividend was paid on July 1st, 1881.

10th. Admits that the defendant, Eugene G. St. Clair in the summer of 1881, entered into negotiations for the purchase of the stock of the Winthrop Iron Company, and did make such purchase. It avers that said negotiations were completed about the 30th day of August, 1881, but the stock was not actually delivered and paid for until the 7th day of September, when the sale was completed, and the stock still remained upon the books of the company in the name of the orignal stockholders. Admits the application to the president by Eugene G. St. Clair to call a special meeting; that a meeting was called and the notice given as stated in the bill. Admits that the parties named in the bill were the only ones present at said meeting and that the record of the meeting attached to the bill is accurate. Alleges that the resignations of the directors named therein were presented, read and accepted, and after that the vacancies were filled. It denies conspiracy or fraud on the part of St. Clair Bros. It avers that the arrangement for the new lease was intended to benefit the stock. It denies that fifty cents per ton royalty was a fair rate when the lease was made in 1877. It avers that twenty-five cents per ton is a fair and liberal rate at the present time.

11th. Admits that the Hematite Company was organized for six years, but alleges that its life has, since the filing of the bill herein, been extended under the provisions of law to thirty years.

12th. Admits that the Iron Company had only

eighteen years existence from the expiration of the first lease, but denies that the lease to the Hematite Company for said eighteen years was an attempt to render the stock of the Iron Company valueless.

13th. Admits the change of offices from Chicago to Ishpeming.

14th. Denies that the stock of the Iron Company is fully paid, and denies that the resolutions to assess the stock was invalid.

15th. Denies all allegations of fraud.

16th. Admits that, in accordance with the resolution passed at the meeting of October 1st, work has been done upon the shaft. Avers that the lease authorized at said meeting was executed after the filing of the bill.

17th. Again denies all conspiracy to injure the value of the stock.

18th. Avers that sinking the shaft was a necessity for profitably working the mine.

19th. Avers that by the sinking of said shaft the product of the mine would be largely increased and the Iron company's dividends largely enhanced.

20th. Avers that the royalty of twenty-five cents per ton specified in the new lease is reasonable and liberal.

21st. Avers that said lease is a just one for the Iron company and will increase instead of decreasing the amount of dividends and the value of the stock.

22d. Avers that during the existence of the first lease it was unprofitable to the lessees.

At the time the bill was filed, the new lease had not been executed and there was therefore no prayer in the bill that it be decreed void. The prayer was that the St. Clairs should be removed from office as directors; that

the defendants should be enjoined from proceeding with work on the shaft and from paying out money therefor, and from making any assessment on the stock and from executing a new lease, and that a receiver should be appointed, and for general relief.

There is no clause in the decree declaring the proceedings of the meeting of October 1st, 1881 void, neither does the decree remove either of the St. Clairs from office as directors nor enjoin them from sinking the deep shaft, or expending money therefor, or from assessing the stock. These are matters that have not yet been passed upon, and are still unsettled.

The decree contains six clauses.

1st. The lease dated Nov. 30th, 1881, executed by the Winthrop Iron Company to the Hematite Company, after the filing of the bill, is declared null and void.

2nd. A receiver is appointed for the Winthrop Company.

3rd. The Winthrop Company, the Hematite Company and the St. Clairs are directed to surrender to the receiver all the property of the Winthrop Company.

4th. The receiver is directed to continue the business of the Winthrop Iron Company, *and to lease or operate its mine until the further order of the court.* He is directed to keep full and accurate account of his acts and doings as receiver, and to report the same from time to time to the court as may be directed, and he is given leave to apply to the court from time to time for such further order and direction as may be necessary..

5th. The St. Clair Bros. and the Hematite Company are to account as trustees of the Winthrop Iron Company for a reasonable royalty upon the ore mined by them since December 1st, 1882, and a reference is made to the

Master to take and state an account;

(a)—Of the royalty due from them under the old lease and concerning the rights and obligations of the lessor and lessee under that lease, which terminated by virtue of its own provisions on December 1st, 1882.

(b)—Of the royalty to be charged on ore mined after the expiration of the old lease.

(c)—Of the property of the Winthrop Company on hand or that ought to have been on hand on November the 30th, 1881, or that has been used and expended by the lessees since that date in the business, with the dates and amounts of expenditures, and the purposes for which expenditures were made, and to what extent such expenditures are or may be of value to the Winthrop Iron Company, and also to what extent such expenditures are or may be of value to the Hematite Company or to the St. Clair Bros.; and also of the compensation to be allowed the complainants for counsel fees and expenses.

The Master is to be at liberty to make special report from time to time, but is to make his general report concerning these matters with all convenient speed.

6th. The Court reserves to itself such further direction *as may be necessary to carry the decree into effect*, concerning costs; or as may be equitable and just.

The return of the Circuit Judge to the alternative writ and the motion to dismiss the appeal proceed upon the theory that this decree is interlocutory, and not final, within the meaning of the act of Congress.

In granting the appeal which had been denied by the Circuit Judge, Mr. Justice Matthews frankly and freely expressed his conviction that the decree was final.

Deference to that opinion led Counsel for Appellees to carefully examine all the reported decisions of this

Court bearing upon the question.

A review of the cases so thoroughly satisfied us of the the interlocutory character of this decree, that we have at some length collated the authorities, and we present them for the patient consideration of the Court with confidence that they will sustain our position.

Under other circumstances, we should content ourselves with citing the cases. Our departure from the ordinary rule, we hope and believe is fully justified by the fact we have stated.

In the case of the Palmyra 10th Wheaton, page 502, the libel was dismissed, but after the decree of restitution there had been a reference to commissioners to ascertain the amount of damages, and before the report of the commissioners had been acted upon by the court an appeal had been taken.

Chief Justice Marshall says: "The Court has had the "question submitted in this cause under consideration, "and is of opinion that the appeal is not well taken. "The decree of the Circuit Court was not final in the "sense of the Act of Congress. The damages remained "undisposed of, and an appeal may still lie upon that "part of the decree awarding damages. The whole cause "is not, therefore, finally determined in the Circuit Court: "and we are of opinion that the cause cannot be divided, "so as to bring up successively distinct parts of it.

The case in 3rd Cranch. 179, is essentially different. "In that case, which was an appeal in an equity cause, "there was a decree of foreclosure and sale of the mort-"gaged property. The sale could only be ordered after "an account taken, or the sum due on the mortgage ascer-"tained in some other way; and the usual decree is that, "unless the defendant shall pay that sum in a given time,

"the estate shall be sold. The decree of sale, therefore, "is in such a case final upon the rights of the parties "in controversy, and leaves ministerial duties only to be "performed."

In Young vs. Smith, 15th Peters, 287, Mr. Justice "Storey says: "We are of opinion that the decree is an "interlocutory and not a final decree, in the sense of the "Act of Congress. It is plain that it does not dispose of "the whole matter in controversy between the parties. "And if an appeal could now lie upon the decree already "rendered, an appeal could also lie from time to time. "from any future decree of distribution of any assets "which may be collected after the former decree, *toties* "*quoties* without any final decision being made of all the "matters in controversy. In our judgment this would "be against the clear import and intention of the Acts of "Congress; which were designed to give an appeal only "from a decree final upon the whole matters and merits "of the controversy."

The next case passed upon by the Court is that of Forgay vs. Conrad, 6th Howard, 201, and is the case upon which appellants will chiefly rely. The decree in this case was held to be such a final decree as would be appealable and in that case the deed, under which defendants claimed title, was not only set aside, but the decree directed the property in dispute to be delivered *to the complainant, and awarded execution.* Chief Justice Taney at page 204 lays down the rule thus:

"And when the decree decides the right to the pro- "perty in contest, *and directs it to be delivered up by the* "*defendant to the complainant*, or directs it to be sold, "or directs the defendant to pay a certain sum of money "to the complainant, and the complainant is entitled to "have such decree carried immediately into execution,

"the decree must be regarded as a final one to that ex-
"tent, and authorizes an appeal to this Court, although
"so much of the bill is retained in the Circuit Court as
"is necessary for the purpose of adjusting, by a further
"decree, the accounts between the parties pursuant to
"the decree passed.

"This rule, of course, does not extend to cases where
"money is directed to be paid into Court *or property to*
"*be delivered to a receiver* or property held in trust to
"be delivered to a new trustee appointed by the Court,
"or to cases of a like description. Orders of that kind
"are frequently and necessarily made in the progress of
"a cause. But they are interlocutory only and intended
"to preserve the subject matter from waste or dilapida-
"tion and to keep it within the control of the Court un
"til the rights of the parties concerned can be adjudi-
"cated by a final decree."

Perkins *vs.* Fourniquet, 6th Howard, 206, is the next case in the volume. The Circuit Court decreed that the complainants were entitled to two-sevenths of certain property and referred the matter to a Master in Chancery to take and report an account prescribing fully and with precision the principles upon and manner in which the account should be taken, and reserving all other matters until the coming in of the report. The Chief Justice, at page 208, says:

"This clearly is not a final decree in any respect. It is
"the common and ordinary interlocutory order or decree
"passed by Courts of Chancery in cases of this kind, and is
"absolutely necessary to prepare the case for a final hearing
"and final decree, wherever the complainant is entitled to a
"partition of property or an account. For the principles up-
"on which an account is to be stated by the Master, or a
"partition made, cannot be prescribed by the Court until it
"first determine the rights of the parties by an interlocutory
"order or decree; and the case cannot proceed to final hear-

"ing without it. And the appellant is not injured by deny-
"ing him an appeal at this stage of the proceedings, Be-
"cause these interlocutory orders and decrees remain under
"the control of the Circuit Court, and subject to their revis-
"ion, until the Master's report comes in and is finally acted
"upon by the Court, and the whole of the matters in contro-
"versy between the parties disposed of by final decree.
"And upon an appeal from that decree, every matter in
"dispute will be open to the parties in this Court, and
"may all be heard and decided at the same time."

This case came before the Court again in 16th Howard, 82, and it was held that when the cause had been referred to the Master and afterwards came before the court upon exceptions to the master's report, the court had a right to change its opinion from that which it had expressed in the interlocutory order and to dismiss the bill. That all previous interlocutory orders were open for revision.

In Pulliam vs. Christian, 6th Howard, page 209, the decree of the Circuit Court set aside a deed made by a a bankrupt before his bankruptcy and directedthe trustees under the deed to deliver over to the assignee in bankruptcy all the property remaining undisposed of in their hands, but without deciding how far the trustees might be liable to the assignee for the sums received for the proceeds of the property which may have been paid over to the creditors. An account was also ordered to be taken of the same and the decree was held to be not a final decree.

Mr. Justice McLean, at 212, says:

"This decree is final only as to the trust deed. All
"the matters arising under the trust are referred to a
"commissioner for a statement of the account to enable
"the Court to enter a final decree. There is no sale or

"change of the property ordered which can operate in-
"juriously to the parties. Under such circumstances,
"the decree not being final as to the whole matter in con-
"troversy, the appeal must be dismissed."

In Craighead vs. Wilson, 18th Howard 199, the case was referred to a master to state an account between plaintiffs and defendants and to ascertain what property remained in the hands of the ~~Master~~ latter and how much had been sold, with the prices, to make allowance to the defendants for payments made or incumbrances discharged and to ascertain what might be due from defendants to plaintiffs.

Mr. Justice McLean cites, with approval, Perkins vs Fourniquet, and Pulliam vs. Christian, supra, and says, at page 201:

"The above cases are sufficient to show the grounds
"on which appeals in Chancery are dismissed. To au-
"thorize an appeal the decree must be final on all matters
"within the pleadings, so that an affirmance of the de-
"cree will end the suit. To apply this test in all cases
"cannot be difficult.

"In no legal sense of the term is the decree now be-
"fore us a final one. The basis of the decree, embracing
"the equities of the bill, is found, but the distribution
"among the parties in interest depends upon the facts to be
"reported by the master. It is his duty, under the inter-
"locutory decree, to balance the equities by ascertaining
"what has been expended upon the property, and what has
"been received by each of the claimants; and also every
"other matter which should have a bearing and influence
"in the distribution of the property. Until the court
"shall have acted upon this report and sanctioned it,
"giving to each of the devisees his share of the estate under
"the will, the decree is not final.

"There may be cases in which the attention of the Court "has not been drawn to the character of the decree appealed "from; but such an inadvertence cannot constitute an excep- "tion to the rule. The decision of the Court, under the law, "establishes the rule which must govern in appeals from the "Circuit Court.

"The case of Whiting *vs.* Bank of the United States, 13 "Peters, 6, is supposed to conflict with the above rule; but "that was a decree of foreclosure and sale of the mortgaged "premises. This was held to be a final decree, the order for "sale having an effect similar to that of an execution on a "judgment.

"The case of Michaud et al *vs.* Girod et al, 4 Howard, "503, was an interlocutory decree in the Circuit Court, and "which case, being appealed, was heard and decided by this "Court. But, from the report, there appears to have been "no exception taken to the appeal, and it may be presumed "to have escaped the notice of the Court.

"The case of Forgay et al *vs.* Conrad, 6th Howard, 201, "was an appeal from an interlocutory decree, which was sus- "tained, though objected to. But this decision was made "under the peculiar circumstances of that case. The decree "was, that certain deeds should be set aside as fraudulent and "void; that certain lands and slaves should be delivered up "to the complainant; that one of the defendants should pay "a certain sum of money to the complainants; that the com- "plainants should have execution for these several matters; "that the Master should take an account of the profits of the "lands and slaves, and also an account of certain money and "notes, and then said decree concluded as follows, viz.: "'That so much of said bill as contains or relates to matters "'hereby referred to the Master for a report, is retained for "'further decree in the premises,' etc.

"It will be observed that two deeds for lots in New "Orleans were declared to be null and void, and certain "slaves owned by Forgay, one of the appellants, were di- "rected to be sold on execution, as also the real estate, and

"the proceeds distributed among the bankrupt's creditors; "and if the defendants principally interested could not take "an appeal until the return of the Master, their property, "under the decree, would have been disposed of beyond the "reach of the Appellate Court, so that an appeal would be "useless. This was the principal ground on which the "appeal was sustained, although it was stated that this part "of the decree was final.

"The Court says: 'The decree upon these matters "'might and ought to have awaited the Master's report; "'and when the accounts were before the Court, then every "'matter in dispute might have been adjudicated in one "'final decree; and if either party thought himself ag- "'grieved, the whole matter could be brought here and "'decided in one appeal, and the object and policy of the "'Acts of Congress upon this subject carried into effect.'

"The decree before us is not final, consequently it must "be dismissed."

In Beebe *vs.* Russell, 19th Howard, 283, the appeal was dismissed. The bill prayed that the defendants might be ordered to convey to the complainant certain pieces of property, which it was alleged were fraudulently withheld from him, and account for the rents and profits. The Circuit Court decreed that the defendants should execute certain conveyances and surrender possession, and then proceeded to refer the matter to a Master to take an account of the rents and profits received, or which could and ought to have been received by the defendants or any of them for any part of said premises, etc.

Mr. Justice Wayne, in a careful review of the authorities, lays down the rule thus:

"When a decree finally decides and disposes of the "whole merits of the cause, and reserves no further questions "or directions for the future judgment of the Court, *so that "it will not be necessary to bring the cause again before the "Court for its final decision*, it is a final decree. It is true a

"decree may be final, although it directs a reference to a "Master, if all the consequential directions depending upon "the result of the Master's report are contained in the "decree, so that no further decree of the Court will be nec- "essary, upon the confirmation of the report, to give the par- "ties the entire and full benefit of the previous decision of "the Court."

Referring to the order of reference in that case, the same Judge says that further action of the Court in the nature of a decree would be necessary to give the defendant in error the benefits of "the rents and profits received by the defendants "in the Court below, or which could or ought to have been "received by them or any of them for any part of the prem- "ises."

That the Court's direction to the Master as to how the accounts of rents and profits should be taken involve rights in the respective parties and a pecuniary uncertainty in respect to the sum to be paid by the defendant, which are only to be made certain and operative by the same Court upon the Master's report; that it left a sum to be ascertained with precision by the Master from the elements from which he was directed to make up the account, but not those merely consequential from the previous directions of the decree, and he proceeds at page 286:

"But the reference of a case to a Master, to take an ac- "count upon evidence, and from the examination of the par- "ties, and to make or not to make allowances affecting the "rights of the parties, and to report his results to the Court, "is not a final decree; because his report is subject to excep- "tions from either side, which must be brought to the notice "of the Court before it can be available. It can only be "made so by the Courts over ruling the exceptions, or by an "order confirming the report, with a final decree for its ap- "propriation and payment. We have just said the decree is "final when ministerial duties are only to be done to ascer- "tain a sum due. The case of Ray vs. Law, 3 Cranch, 179, is

"an instance. It was there ruled by this court that a decree "for a sale under a mortgage is such a final decree as may be "appealed from. Afterwards, when that case was cited in "the case of the Palmyra, (10 Wheaton, 502), Marshall, Chief "Justice, said for the Court: 'In that case, which was an "'appeal in an equity cause, there was a decree of fore-"'closure and sale of the mortgaged property. The sale "'could only be ordered after an account taken, or the sum "'due on the mortgage ascertained in some other way. "'And the usual decree is, that unless the defendant shall "'pay that sum in a given time, the estate shall be sold. "'The decree of sale, therefore, is in such a case final upon "'the rights of parties in controversy, and leaves ministerial "'duties only to be performed.' In such a case, the direction "is but a consequence of the decree, and no further decree is "necessary. * * * It has been supposed that this "Court did not apply its present interpretation of the laws "regulating appeal in the cases of Whiting *vs.* Bank of the "United States, (13 Peters, 6), of Michaud *vs.* Girod, (4 "Howard, 503), and in Forgay *vs.* Conrad, (6 Howard, 201). "It is, however, not so. Whiting's case, in that part of it "relating to appeals, was only what this Court had said in "Ray *vs.* Law before cited, that a decree of foreclosure and "sale is final upon the merits of the controversy, and an "appeal lies therefrom. In Michaud *vs* Girod no such point "was made in the argument of it, nor touched upon in the "opinion of the Court. In Forgay's case, it was made upon "the decree given by the Court below, and it was adjudged "by this Court to be final, to give this court jurisdiction of "it. But it was so, upon the ground that the whole merits "of the controversy between the parties had been determined, "*that execution had been awarded*, and that the case had been "referred to the Master merely for the purpose of adjusting "the accounts. The fact is, the *order of the Court in that "case for referring it to a Master was peculiar*, making it "doubtful if it could in any way control or qualify the ante-"cedent decree of the Court upon the whole merits of the

"controversy, or modify it in any way, except upon a petition "for a re-hearing. We refer to the case, however, with confi- "dence, to show that the reasoning of the opinion is caution- "ary upon the subject of bringing appeals, and confirmatory "of what we have said in this case. We dismiss the case, the "Court not having jurisdiction of the appeal."

In Humiston *vs.* Stainthrop, 2 Wallace, 106, a decree awarding a patentee a permanent injunction and for an account of gains and profits, and that the cause be referred to a Master to take and state the account and report to the Court, was held not to be a final decree. The same kind of decree had previously been held interlocutory in Barnard *vs.* Gibson, 7th Howard, 650.

Thomson *vs.* Dean, 7th Wallace, 342, is not in conflict with these authorities. The controversy related to the ownership and transfer of 204 shares of stock of the Memphis Gaslight Company and the rights of the parties under contracts relating to the purchase, sale and transfer of the stock. The decree directed the defendant to transfer to one of the complainants 194 shares, and 10 shares to another. It also directed an account to be taken as to the amount paid and to be paid for the stock, and as to dividends accrued and to be credited under the contracts between the parties. In the language of the Chief Justice, the decree decided the right to the property in contest and directed it to be delivered by defendant to complainant by transferring title, the defendant to have the decree carried immediately into execution, leaving only to be adjusted the amount between the parties in pursuance of the decree settling the question of ownership.

In Railroad Company *vs.* Swasey, 23d Wallace, 405, it was held that even a decree of foreclosure and sale is not final so long as the amount due upon the deed must be ascertained and the property to be sold ascertained and defined. At page 410 the Chief Justice says:

"A reference to a Master to ascertain and report the "facts is not sufficient. A Master's report settles no rights.

"Its office is to present the case to the Court in such a man-
"ner that intelligent action may be there had, and it is this
"action by the Court, not the report, that finally determines
"the rights of the parties."

The last case which seems to have been passed upon by the Court is Grant *vs.* Phœnix Insurance Company, 106 U. S., 429. The Chief Justice delivered the opinion of the Court, as follows:

"The rule is well settled that a decree to be final, within
"the meaning of that term as used in the Acts of Congress
"giving this Court jurisdiction on appeal, must terminate the
"litigation of the parties on the merits of the case, so that if
"there should be an affirmance here the Court below would
"have nothing to do but to execute the decree it had already
"rendered. This subject was considered at the present term
"in Bostwick *vs.* Brinkerhoff, ante p. 3, where a large num-
"ber of cases are cited. It has also been many times decided
"that a decree of sale in a foreclosure suit, which settles all
"the rights of the parties and leaves nothing to be done but
"to make the sale and pay out the proceeds, is a final decree
"for the purposes of an appeal. Ray *vs.* Law, 3 Cranch, 179;
"Whiting *vs.* Bank of the United States, 13 Peter, 6; Bron-
"son *vs.* Railroad Company, 2 Black, 524; Green *vs.* Fisk,
"103, U. S. 518. But in Railroad Company *vs.* Swasey, 23
"Wallace, 405, it was held that 'to justify such a sale, with-
"'out consent, the amount due upon the debt must be deter-
"'mined. * * * Until this is done the rights of
"'the parties are not all settled. Final process for the col-
"'lection of money cannot issue until the amount to be paid
"'or collected by the process, if not paid, has been adjudged.'
"In this the Court but followed the principle acted on in
"Barnard *vs.* Gibson, 7 Howard, 650; Crawford *vs.* Points, 13
"id. 11; Humiston *vs.* Stainthorp, 2 Wallace, 106; and many
"other cases.

"The present decree is not final, according to this rule.
"It does not order a sale of the property. It overrules the

"defense of the appellant, as set forth in his cross bill, and "declares that the appellee is the holder and owner of the "debt secured by the deeds of trust, but refers the case to an "auditor to ascertain the amount due upon the debt, the "amount due certain judgment and lien creditors, the exist- "ence and priorities of liens, and the claims for taxes. It is "true that the Court finds the amount due the appellee largely "exceeds the value of the property, but this is only as a foun- "dation for the order appointing the Receiver. If, in point "of fact, it is not true, the finding will not conclude the par- "ties in the final closing up of the suit. The order for the "delivery of the property is only in aid of the foreclosure "proceedings, and to subject the income, pending the suit, to "the payment of any sum that may in the end be found to be "due. If anything remains, either of the income, or of the "proceeds of the sale, after the mortgage or trust debts are "satisfied, it will go to the appellant, notwithstanding what "has been decreed. There is no order as in Forgay *vs.* Con- "rad, 6 Howard, 201; Thomson *vs* Dean, 7 Wallace, 342, and "other cases of a like character, adjudging the property to "belong absolutely to the appellee, and ordering immediate "delivery of possession. In Forgay *vs.* Conrad, supra, which "is a leading case on this question, it was expressly said by Mr. "Chief Justice Taney (p. 204) that the rule did not extend to "cases where property was directed to be delivered to a re- "ceiver. The reason is that the possession of the Receiver is "that of the Court, and he holds, pending the suit, for the "benefit of whomsoever it shall in the end be found to con- "cern. Neither the title nor the rights of the parties are "changed by his possession. He acts as the representative of "the Court in keeping the property so that it may be sub- "jected to any decree that shall finally be rendered against it."

In the light of these decisions is not the decree in this case clearly interlocutory? The only thing that can be said to be finally settled by the decree is the provision in the first clause adjudging the new lease executed after the filing of the

bill to be void, and in the language of Mr. Justice McLean in Pulliam *vs.* Christian, "All the matters arising under the "trust deed are referred to a Master for a statement of account "to enable the Court to enter a final decree."

It is not impossible that when the report comes in the Court may change its opinion and hold the lease valid, or it may hold the proceedings of October 1st, 1881, to have been valid and regular, and to authorize the execution of another lease omitting some of the objectionable features of this one.

The Master's report of the matters referred to in clause (c) may show such a state of affairs that the Court may conclude that a new lease may be so advantageous in its operation that it should be executed. It cannot be said "that an affirmance "of the decree will end the suit," and that is the rule laid down as has been seen in Craighead *vs.* Wilson, 18th Howard, 199. The language of the Court in that case is precisely applicable here:

"In no legal sense of the term is the decree now before "us a final one. The basis of the decree, embracing the equi- "ties in the bill, is found, but the distribution among the "parties in interest depends upon the facts to be reported by "the Master. It is his duty, under the interlocutory decree, "to balance the equities by ascertaining what has been ex- "pended on the property," etc.

The clause annulling the new lease cannot therefore give the stamp of finality to this decree. It merely furnishes the basis of the interlocutory decree. It does not finally settle the whole case. It does not dispose of the whole matter in controversy between the parties. "It is the common and or- "dinary interlocutory order or decree passed by Courts of "Chancery in cases of this kind, and is absolutely necessary "to prepare the case for a final hearing and final decree, wher- "ever the complainant is entitled to a partition of property "or an account. For the principles upon which an account is "to be stated by the Master, or a partition made cannot be "prescribed by the Court until it first determine the rights

"of the parties by an interlocutory order or decree; and the "case cannot proceed to final hearing without it." (Perkins *vs.* Fourniquet, supra.)

Without further repetition it is insisted that in no sense of the term, as defined by the authorities, is this decree final. There is no clause except the first that is urged as giving a final character to the decree. All the others are of a purely interlocutory character.

If further demonstration be needed, it is furnished by that clause in the decree which appoints a Receiver to take charge of the business "until the further order of Court;" that is, until such time as an accounting shall have been had and the rights of all parties definitely ascertained, so that the property can be turned over by the Receiver to the company, with the matters involved in this litigation forever settled.

Does not this clause, with the direction given the Receiver to report to the Court from time to time, and the leave to apply for further orders, clearly show the interlocutory nature of the decree? In the case of Forgay *vs.* Conrad, which is understood to be the case most relied on by the defendants, the Chief Justice expressly says that a decree would not be final where it directed property to be delivered to a Receiver, and his language in that particular, as has been seen, lately received the approval of the Court in Grant *vs.* the Phœnix Insurance Company. From the very nature of things a decree appointing a Receiver must be interlocutory. The appointment of a Receiver cannot be permanent. It is merely temporary. The Court, through its Receiver, takes possession of the property to hold until the rights of all parties are settled by the final decree, and on the final decree the property must either be turned over to some of the parties or be sold. It is only until the final disposition of the property can be determined that the Court holds possession of it through its Receiver, who takes charge of the same. And in this case there was a necessity for the appointment of such a Receiver. At the expiration of the old lease on December

1st, 1882, the Winthrop Iron Company, by virtue of the provisions of that lease, must have purchased the property and fixtures owned by the Hematite Company. This property was worth from $30,000.00 to $40,000.00. If the parties could not agree upon the value, resort was to be had to arbitration. The St. Clair Bros. being officers of both corporations, doubt lsss there would be little trouble in agreeing upon the price that they as officers of the lessors should pay to themselves as the officers of the lessees for these improvements, and so there would be no necessity for this arbitration. Their larger interest was with the Hematite Company, as they owned its entire stock, and their endeavor would have been to obtain the largest price. Being so much interested for the seller, the Court could not allow them to also represent the purchaser. If for no other purpose, therefore, it was not only proper, but necessary, that a Receiver should be appointed who should take care of the interests of the iron company in the purchase of the improvements, and this was so whether the new lease was held valid or not, for the purchase of the personal property was to be made by virtue of the provisions of the old lease, and had no connection with the new, except that when so purchased the property was to go to the lessee under the new lease as a part of the demised property.

The interlocutory nature of the decree is also shown by the direction to the Master to report as to the expenditures made by the lessees, and to what extent they would benefit the lessors. It is evident that all questions relating to the parties upon whom the Court should finally impose the expense of this deep shaft, costing $50,000.00, were to be reserved until the coming in of the Master's report, and until the Court was advised by that report as to the party most benefited by that expenditure. Then there is in this decree the reservation by the Court of the right to make such further directions as should be necessary to carry the decree into effect, or as might be equitable and just.

In some of the cases cited considerable stress is laid upon such a reservation of authority.

It is therefore insisted that the decree entered in this case is interlocutory and not final; that the rule requiring the Hon. John Baxter, Circuit Judge, to show cause why an appeal should not be allowed, should be vacated, and that the appeal granted by Mr. Justice Matthews, sitting as Circuit Judge, should be dismissed.

We append the opinion of the Court below, taken from 17 Federal Reporter 48.

BAXTER, J. The defendants, the Winthrop Iron Company and the Winthrop Hematite Company, are corporations organized under the laws of Michigan. The capital stock of the former consists of an iron ore mine rated at $500,000. In August, 1877, it made a lease thereof to the St. Clair Brothers, a partnership composed of the four defendants by that named sued herein. Soon after securing said lease they organized the Winthrop Hematite Company, for the purpose of working the mine thereunder. They continued thus to operate it until the summer of 1881, when they made an effort to obtain a renewal thereof to the Winthrop Hematite Company. But failing to secure it they proceeded to purchase a majority of the capital stock of the Winthrop Iron Company, and assume control of their business. At their instance a stockholders' meeting was called for Oct. 1881. The meeting was accordingly held by one of the St. Clairs (who acted for himself and brothers), assisted by W. S. Hollert, their attorney and one G. B. Breese. Neither Hollert nor Breese owned any stock in the company. Hollert was made president and Breese secretary of the meeting. Being thus organized they adopted certain resolutions, in which, among other things, they removed two directors of the company, and appointed three of the St. Clairs in their stead; authorized the sinking of a shaft at the mine, and appropriated $50,000 of the company's money to complete and equip it; authorized and directed a lease of the company's mine for 18 years from and after December 1, 1882.—the time at which the former lease was to expire,—to the Winthrop Hematite Company, and soon thereafter Eugene G. St. Clair as president, and J. N. St. Clair as secretary, of the Winthrop Iron Company; and Eugene G. St. Clair as secretary, and George A. St. Clair as superintendent, of the Winthrop Hematite Company, professing to act for and in behalf of their respective companies, entered into contract wherein and whereby it was agreed that said first company should lease its mine,

at that time. Nothing has since been developed in connection therewith calling for any radical change of opinion in this regard; and yet, after more than three years of actual experience in working the mine under that lease, the defendants, for the purpose of securing another lease of the same property, resorted to the means hereinbefore detailed to obtain it: and, after having thus secured absolute control of the corporation to which it belonged, by their votes as stockholders, authorized and directed themselves, as the officers and agents of the company, to make and execute a lease of said premises to another and distinct corporation, wholly owned by them and for their exclusive benefit, at one-half the royalty contracted for in the first lease, provided a sufficient quantity of ore could be found accessible without an unreasonable outlay of money.

It seems that a reduction of one-half the royalty agreed to be paid under the first lease ought to have been accepted as a sufficient concession. But it did not satisfy the defendants. They demanded more, and being, as they supposed, in full possession of the requisite power, they dealt in a most generous spirit with themselves. The second lease, conforming to the requirements of the resolution passed by their votes, included, in addition to the mine, from $30,000 to $40,000 worth of machinery (which the lessor company was, under the terms of the first lease, bound to purchase) and the $50,000 of money appropriated for the purpose of sinking and equipping a shaft to put the mine in a more workable condition to facilitate their operations. Interest on these two sums, ordinary deterioration of the machinery, the $3,000 salary allowed to one of the defendants for acting as president of a corporation stripped of its property and left without any active business or responsibility, will about absorb all the rent payable under said second lease. Its effect, therefore, is to transfer the beneficial interests of all the company's property to defendants for 18 years. But if, perchance, it does not do this, another stockholders' meeting, to be called and controlled by defendants, can easily find some pretext for appropriating any surplus that may remain. A lease thus attained, and capable of being perverted to such injustice, ought not to be sustained. It is inequitable, and a fraud upon the rights of the other stockholders. A decree will, therefore, be entered, declaring it fraudulent, and ordering its rescission, and appointing a receiver to take charge of and superintend the company's business, until the accounts hereinafter ordered and the rights of the parties involved herein are ascertained and finally adjusted. The defendant St. Clair will also be required to account with the Winthrop Iron Company, pursuant to the terms of the first lease, until December 1, 1882, the date of its expiration, and from and after that time for the actual profits realized by them from said mine, or for a reasonable royalty, at complainant's election. Said defendants

will also be decreed to pay the costs heretofore accrued. And as the complainants have prosecuted this case for the common benefit of all the parties interested, to protect and preserve a trust fund, they are entitled to be reimbursed therefrom for all proper expenditures made or liabilities necessarily incurred in and about the prosecution of the same. A Master will therefore be appointed to hear proof, and take and report in reference to the accounts hereinbefore ordered, and to ascertain what will be a proper allowance to complainants for their counsel fees and other necessary expenditures made or to be made by them in and about the prosecution of this suit.

All other questions will be reserved until the coming in of the Master's report.

FREDERIC ULLMANN,
For Appellees.

L. D. NORRIS, *of Counsel.*

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883.

A. B. MEEKER *et al.*
vs.
THE WINTHROP IRON CO. *et al.*
} Appeal from Circuit Court West'n Dist. Mich.

STIPULATION.

It is hereby stipulated (1) that further proceedings under the rule for alternative mandamus passed at the last Term be waived and dispensed with; (2) and that the right of the defendants to an appeal may be determined upon the hearing of the motion made by complainants to dismiss the appeal and vacate the supersedeas allowed and granted by Mr. Justice Matthews; (3) and that the accompanying copy of the bill, answer and decree furnished by counsel herein (and also the copy of opinion of Judge Baxter accompanying the complainants' brief on motion to dismiss) stand, for the purposes of such hearing, in lieu of reprint of Transcript of Record by the clerk.

FREDERIC ULLMANN,
For Complainants.

R. D. MUSSEY,
For Defendants.

BILL.

IN EQUITY.

To the JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN. NORTHERN DIVISION:

Arthur B. Meeker and William L. Brown, of the city of Chicago, county of Cook and State of Illinois, and citizens of the State of Illinois, and T. B. Brooks of Newberg, county of Orange and State of New York, and a citizen of the State of New York, bring this, their bill, against the Winthrop Iron Company, a corporation organized and existing under the laws of the State of Michigan, and a citizen of the State of Michigan, the Winthrop Hematite Company, a corporation organized and existing under the laws of the State of Michigan, and a citizen of the State of Michigan, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair, and Julius N. St. Clair of Ishpeming in the State of Michigan, and citizens of the State of Michigan, and residents of the Western District of Michigan, and John N. Glidden and Dan. P. Eells, of Cleveland, in the State of Ohio, and citizens of the State of Ohio.

I. And thereupon your orators complain and say, that the said Winthrop Iron Company is a corporation existing under the laws of the State of Michigan, owning a valuable mine situated in the county of Marquette in said State of Michigan, and has been such corporation since the year 1871, organized for the purpose of carrying on the business of iron mining or producing iron, copper or other ores or minerals in the upper peninsula of Michigan, the reducing the same to metal, the selling, disposing of and dealing in the said ores or metals in such markets or places in or out of said State of Michigan as might be deemed proper and

advantageous to the interests of said corporation; that its capital stock is the sum of five hundred thousand dollars ($500,000), divided into twenty thousand shares (20,000) of twenty-five ($25) each. And your orators attach to this, their bill, as "Exhibit A," a certified copy of the articles of association of said Winthrop Iron Company, duly certified by the clerk of the county of Marquette in the State of Michigan.

II. That on the first day of October A. D. 1881, and for a long time prior thereto the estate of one A. D. Reed owned nine thousand nine hundred and ninety-nine (9999) shares of the capital stock of said company, but the same was held in the names of Mary P. Reed, Mrs. Mary Bell Carpenter, Mrs. A. D. Reed and Mrs. A. D. Reed, trustee.

III. That one A. C. Reed held two hundred and one (201) shares thereof; one Harriet Colwell eight hundred and fifty-six (856) shares thereof; the defendant, George A. St. Clair, one thousand five hundred and eighty-eight (1588) shares thereof; and the defendant Eugene G. St. Clair ten (10) shares thereof, that your orator A. B. Meeker held two thousand nine hundred and fifty (2950) shares thereof, your orator William L. Brown fifty (50) shares thereof, and your orator T. B. Brooks five hundred (500) shares thereof, and that one A. C. Reed was the President and one J. M. Chapman was the Secretary of said company.

IV. Your orators further show that the said James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair are brothers, residing at Ishpeming in the State of Michigan; that they are partners in various kinds of business under the firm name of St. Clair Brothers, and have been such partners under said firm name for a number of years. And your orators charge that the stock in said Winthrop Iron Company so as aforesaid held by the said George A. St. Clair and the said Eugene G. St. Clair belonged in fact to said firm. That on the second day of August, A. D. 1877, the said Winthrop Iron Company made and executed to the said firm of St. Clair Brothers a lease of

its said mine for the period of five years from December 1st, A. D. 1877, that is to say, until the first day of December A. D. 1882, at a rental of (50) cents per ton of 2240 pounds of ore taken from said mine during the said term by the said lessees. That said lease was duly recorded in the office of the register of deeds of said county on the 23d of August, A. D. 1877, in liber 2 of miscellaneons records, page 458.

And your orators attach to this bill a certified copy of the record of said lease, marked "Exhibit B."

V. And your orators further show that very shortly thereafter, to wit, on the 9th day of August, A. D. 1877, the said St. Clair brothers, together with one H. J. Colwell and Harriet T. Colwell organized a corporation under the laws of the State of Michigan called the Winthrop Hematite Company, for the purpose of mining, refining, smelting and manufacturing iron ores and iron, and duly filed articles of association, as required by law, a copy whereof duly certified by the clerk of the county of Marquette is attached to this bill, marked "Exhibit C."

VI. And your orators show that all the stock of the Winthrop Hematite Company, except a portion thereof taken by the said Coldwells, was taken by the said St. Clair Brothers, and that shortly afterwards they bought out all the interest of the said Coldwells in said company and have ever since owned, and as your orators are informed and believe, still own all the stock of the said Hematite Company.

VII. That the said Winthrop Hematite Company was organized for the purpose of operating said Winthrop mine under the lease so as aforesaid executed by the said Winthrop Iron Company to the said St. Clair Brothers, and in pursuance thereof the said St. Clair Brothers, on the 22d day of August, A. D. 1877, by an instrument under their hands, assigned and set over the said lease to the said Winthrop Hematite Company, and the said assignment was recorded in the office of the register of deeds of the said county of Marquette, on August 23d, A. D. 1877, in liber 2 of mis-

cellaneous records, page 460; and your orators attach to this, their bill, as "Exhibit D," a certified copy of the said assignment.

VIII. That afterwards, to wit, on the 30th day of August, A. D. 1877, the said Winthrop Hematite Company assigned the said lease to the defendants, John N. Glidden and Dan. P. Eells, co-partners, of Cleveland, Ohio, and which said assignment was also recorded in the same office in liber 2 of miscellaneous records, page 619. And your orators attach to this bill a certified copy of the record thereof, marked "Exhibit E."

And your orators charge that the said assignment so made by the said Hematite Company to said Glidden and Eells was merely made as collateral security to secure a debt due or to become due from said St. Clair Brothers or said Hematite Company to the said Glidden and Eells, so that the said Hematite Company is still the beneficial owner of the said lease.

IX. And your orators further show that the said Winthrop Hematite Company has ever since its organization operated and worked the said Winthrop mine under said lease and has taken out large quantities of ore therefrom, and has paid to the said Winthrop Iron Company large royalties, so that up to a late period the stock of the said Winthrop Iron Company was a valuable stock and an income paying stock, and the amount of the royalties paid by the said Hematite Company was divided among the stockholders of the said Iron company annually or semi-annually at regular intervals.

That at the time of the payment of royalties under said lease for the six months ending July 15th, A. D. 1881, no dividend was declared, but the amount of money in the treasury of the said company was reserved until the receipt of the royalties for the ensuing six months by said company; and your orators charge that if a fair and reasonable amount of ore shall be mined by the said Hematite Company for the said year 1881, there should be in the treasury of the said

company, on the 15th day of January, A. D. 1882, about the sum of thirty thousand dollars, ($30,000,) which sum ought, in justice and equity, to be divided in the shape of dividends among the stockholders of said company.

X. And your orators charge that the said firm of St. Clair Brothers, during the summer of A. D. 1881, conceived the idea of so manipulating the affairs of the said Winthrop Iron Company as to make the same highly profitable to them and to render the stock of all the other stockholders of no value whatever, and with this fraudulent purpose and end in view the said firm commenced to purchase stock in the said Winthrop Iron Company until they had become the owners of twelve thousand six hundred and fifty-four (12,654) shares thereof, being a majority of the whole capital of the said Iron company; but instead of procuring such stock to be transferred to them upon the books of the said company they let it remain outstanding in the names of the parties from whom they purchased the same. And your orators allege that the stock so by them purchased, in addition to the one thousand five hundred and ninety-eight (1598) shares thereof, so as aforesaid standing in the name of George A. St. Clair, and Eugene G. St. Clair was the aforesaid stock belonging to estate of A. D. Reed, the stock belonging to A. C. Reed, and that belonging to said Colwells, and that the same stood as aforesaid on the books of the company in the name of Mrs. Mary Bell Carpenter, Mrs. A. D. Reed, Mrs. A. D. Reed, trustee, and Mary P. Reed, and that the said firm of St. Clair Brothers, or some one of them, caused a petition to be drawn up and to be signed by said Mary P. Reed, Mary Bell Carpenter, Mrs. A. D. Reed, Mrs. A. D. Reed, trustee, George A. St. Clair and Eugene G. St. Clair, and presented the same to A. C. Reed, president of said company, of which the following is a copy:

"To A. C. REED, *President of Winthrop Iron Company:*

"SIR: Will you please call a special meeting of the stockholders of the Winthrop Iron Company, October 1st, 1881, at twelve o'clock noon, as per printed notice appended hereto.

(Signed.) Mary P. Reed, ... 1,003 shares,
Mrs. Mary Bell Carpenter, 1,667 shares,
Mrs. A. D. Reed, . . . 2,000 shares,
Mrs. A. D. Reed, Trustee, 1,667 shares,
George A. St. Clair, . . 1,588 shares,
E. G. St. Clair, ... 10 shares."

And attached to said petition, when presented to said A. C. Reed, President, was the following notice which the said St. Clair Brothers requested the said Reed to sign and to have sent to the stockholders of the said company, that is to say:

"A special meeting of the stockholders of the Winthrop Iron Company is hereby called, to be held at the office of A. C. Reed, President, 100 Dearborn street, Chicago, Illinois, October 1st, 1881, at twelve o'clock noon, for the purpose of considering and acting on the following propositions, viz: removal of general office of the company to Ishpeming, Michigan; election of officers of the company and directors to fill any vacancies which may occur; to authorize the board of directors to make certain necessary improvements at the mine; to authorize extension and changes in lease of the property of the company to the Winthrop Hematite Company; to transact such other business as may legally come before said meeting."

And the said A. C. Reed having previously sold the said St. Clair Brothers all his stock in said company, and having no further interest therein, signed the said notice as president, and caused the said notice to be mailed to some or all of the stockholders of said company.

And your orators further show that on the 1st day of October, A. D. 1881, an alleged meeting of the stockholders

of said Iron company was held by virtue of the said notice. And your orators attach to this bill, marked *Exhibit F*, a copy of the record of the proceedings, which was made by the secretary of the said meeting as the same has been furnished to your orators on application by the said secretary. And your orators charge that neither the said Mary P. Reed, nor the said Mary Bell Carpenter, nor the said Mrs. A. D. Reed, nor the said A. C. Reed, nor the secretary, J. M. Chapman, or either or any of them, was present at said meeting; but your orators allege that said parties had all sold their stock to the said firm of St. Clair Brothers prior to signing the call for the said meeting, and that the only parties present at said meeting were Eugene G. St. Clair, his attorney, William S. Harbert, and one J. B. Breese, who acted as secretary of the said meeting; that the said Harbert and the said Breese had no interest whatever in said company, but attended at the request of the said St. Clair, and were allowed to represent some of the stock of the said St. Clair.

And your orators show that the said Mary P. Reed, A. C. Reed, and J. M. Chapman were, by a resolution adopted at said meeting, removed from office as directors of said company, and on motion of said Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair, and James O. St. Clair were elected as directors in their place. And a resolution was adopted at the said meeting that the board of directors of the said company be authorized and directed forthwith to proceed with work on a deep shaft at the mine for the development and secure working of the same; said shaft to be located and work done on the same under their direction, and one of their number to have full charge of the work and be recompensed for his services at the discretion of the board. And that a resolution was also passed that the revenues of the company not exceeding the sum of fifty thousand dollars should be devoted to the purpose of sinking a deep shaft at the company's mine and properly equip the same, and in case of necessity the board of directors

should call an assessment of the stock in the usual manner for the purpose of raising funds requisite for the prosecution of said work to its full completion. And that the board of directors were authorized and directed to execute a new lease of the said mine to the Winthrop Hematite Company, which should contain, substantially as nearly as might be, conditions and provisions similar to the lease under which said Hematite Company is now operating, except as the same was modified by the said resolution, which said lease should run for the period of eighteen years from and after the expiration of the term of the existing lease; and that the royalty to be paid by the Winthrop Hematite Company under the new lease should be twenty-five cents per ton of iron ore, instead of fifty cents per ton, as specified in the current lease.

And your orators show that the passage of the said resolutions was merely the carrying out of the fraudulent purpose of the said firm of St. Clair Brothers, and a part of their scheme to render the stock of your orators and the other shareholders in said company valueless.

Your orators charge that the resolution which authorized work to be done upon the deep shaft was entirely in the interest of the said lessee, the Winthrop Hematite Company, inasmuch as all the revenues of the company, not exceeding the value of fifty thousand dollars, were thereby to be devoted to the purpose of sinking a shaft by which the said Hematite Company were to take out ore from the mine of the Winthrop Iron Company.

Your orators also show that the royalty of fifty cents per ton specified in the existing lease to the said Hematite Company is a very low and inadequate royalty in view of the present demand for and price of pig iron; that the said royalty of fifty cents per ton was a fair royalty in the year 1877, when the said lease was executed, for the reason that the demand for and the price of iron at that time was much less than at the present time. That the rate specified in the said new lease to be executed to the said Hematite Company, of

twenty-five cents per ton, is a ruinous and fraudulent rate; that a fair royalty upon said new lease would be not less than the sum of seventy-five cents per ton, and your orators know of parties who would be glad to take a lease of the mine of the said Winthrop Iron Company and pay therefor seventy-five cents per ton royalty, and your orators attach to this bill an offer by Robert M. Cherrie, of Chicago, Illinois, whom your orators know to be responsible, offering to pay such royalty therefor.

XI. Your orators also show that by the terms of its charter or articles of incorporation the said Winthrop Hematite Company can only exist for the space of six years from the 9th day of August, in the year 1877, so that on the 9th day of August, in the year 1883, and only one year and seven days after the said existing lease expires by its terms, the said Winthrop Hematite Company will have ceased to have any existence as a legal corporation, and yet it was attempted at said meeting to execute to the said Hematite Company a new lease for the perion of eighteen years from and after the expiration of the term of the existing lease.

XII. And your orators show that the Winthrop Iron Company can only exist under its articles or charter for the space of eighteen years after the expiration of the term of said existing lease; and your orators charge that the attempt to extend the present lease or the attempt to execute a new lease to the Winthrop Hematite Company for such space of eighteen years was in fact an attempt on the part of the said St. Clair Brothers to render the stock of your orators and the other stockholders of the said Winthrop Iron Company, except the St. Clair Brothers, utterly valueless and non-income paying for the full term of the life of the said Winthrop Iron Company.

XIII. And your orators also show that at the said alleged meeting of stockholders a resolution was passed removing the general office of the said Winthrop Iron Company from the city of Chicago, where it had theretofore been, to the office of the bank of Ishpeming, at the city of Ishpeming,

in the State of Michigan. And your orators charge that all the books, records and papers of the said iron company, have been removed by the said St. Clair Brothers, to the said bank, and upon information and belief your orators charge that said firm are also the owners of the said bank.

XIV. And your orators show that the stock of the said Winthrop Iron Company is full paid, and the attempt at said stockholders' meeting to confer upon the board of directors the right to assess said stock was also fraudulent, and is illegal and void. And your orators file this bill not only in behalf of themselves, but also in behalf of all other stockholders of the said Winthrop Iron Company who may desire to come in and contribute to the expenses and share in the benefits thereof.

XV. And your orators charge that all the said proceedings of the said firm of St. Clair Brothers from the time they purchased a controlling interest in said stock up to and including the said meeting constitute a part of a fraudulent conspiracy whereby they hoped to reap to themselves alone all the benefits which could be derived from the ownership of the said Winthrop mine. And your orators claim that all of the said proceedings are utterly void, for informalities in calling said meeting of stockholders, for want of power in the stockholders to pass the resolutions they assumed to pass at said meeting, and for the fraud which the said firm of St. Clair Brothers have attempted to perpetrate upon the other shareholders of said company.

XVI. And your orators show that the said new board of directors are about to open said deep shaft, and are about to expend said sum of $50,000 or some portion thereof for said purpose, and are about to execute such new lease to said Winthrop Hematite Company, and that they will do all of said acts unless enjoined and restrained by this Court.

To the end, therefore, that the said Winthrop Iron Company, the Winthrop Hematite Company, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair, John N. Glidden, and Dan. P. Eells may be made parties

defendant to this your orators' bill, and may be required to show cause, if they can, why your orators should not have the relief hereby prayed, and may be required to make full, direct, and perfect answers to all the matters and things herein contained as fully and specifically as if such matters and things were here again repeated, but not under oath, their answers under oath being hereby waived, and—

1. That the proceedings of the said pretended meeting of stockholders held as aforesaid at Chicago, Illinois, on the first day of October, A. D. 1881, may be declared, adjudged, and decreed by this Court to be fraudulent and absolutely null and void, and of no effect. That an accounting may be had by said defendant corporations to and with their and each of their stockholders.

2. That the said George A. St. Clair, James O. St. Clair, and Julius N. St. Clair may be removed from office as directors of said Winthrop Iron Company.

3. That the said Winthrop Iron Company, its directors, officers, agents and servants may be enjoined and restrained from proceeding with any work on any shaft at said mine, and from paying out any money whatever for the purpose of sinking a shaft at said mine, and from making any assessment on the stock of said company for the purpose of raising funds for such work or for any other purpose.

4. That the said Winthrop Iron Company, its officers, directors, agents and servants be restrained and enjoined from executing any lease to the Winthrop Hematite Company.

5. That until the final hearing hereof a temporary injunction may be issued, restraining each of the said corporations and persons in manner and form as aforesaid, and that on the hearing, such injunction be made perpetual. That the usual and necessary writs of injunction issue to make this prayer effectual.

6. That a receiver be appointed by this Court of all the property of said Winthrop Iron Company, to take possession of all its property, real, personal and mixed of every nature and kind, wheresoever situated, and in whose hands

soever the same may be; and that all persons in possession of the same or any part thereof, and the income, gains or profits thereof, or of any books, papers, documents or accounts belonging to said company be required forthwith to deliver the same over to the said receiver. And that the usual assignment be made by said company to said receiver. That he be vested with the usual powers of a receiver in such case.

7. That your orators may have such other, further or different relief, or both, in the premises as shall be agreeable to equity and good conscience.

It may please your honors to grant unto your orators the usual writ of subpœna issuing out of and under the seal of this Honorable Court to be directed to said Winthrop Iron Company, the Winthrop Hematite Company, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair, Julius N. St. Clair, John N. Glidden and Dan. P. Eells, commanding them and each of them, by a certain date and under a certain penalty to be therein inserted, to be and appear before this Honorable Court, then and there to answer to the premises and to stand to, abide by and perform such order and decree in the premises as shall be agreeable to equity and good conscience.

And your orators will ever pray, etc.

ARTHUR B. MEEKER,
WILLIAM L. BROWN,
T. B. BROOKS,
By F. ULLMANN,
His Solicitor.

NORRIS & UHL,
Solicitors.
FRED ULLMANN,
Of Counsel.

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois. }

STATE OF ILLINOIS, } ss.
Cook County. }

William M. Brown, being duly sworn, on oath states, that he is one of the complainants named in the foregoing bill; that he has read said bill and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are there stated on information and belief, and as to those matters he believes it to be true.

WILLIAM L. BROWN.

Subscribed and sworn to before me, this 12th day of November A. D. 1881.

[SEAL.] ULLMAN STRONG,
Notary Public, Cook County, Illinois.

ANSWER.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION.

IN EQUITY.

The joint and several answer of the Winthrop Iron Company, the Winthrop Hematite Company, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair, part of the defendants to the bill of complaint of Arthur B. Meeker, William L. Brown and T. B. Brooks, complainants.

These defendants jointly and severally answering to the said complainants' bill answer as follows:

1. These defendants admit the several averments contained in the first paragraph of the said complainants' bill of complaint as set forth therein.

2. They deny the averment contained in the second paragraph of said bill, namely: That on the first day of October, 1881, the estate of A. D. Reed owned 9999 shares, or any shares of stock of the said Winthrop Iron Company, and they deny that any of the parties named in said paragraph owned any of the said stock on the said first day of October; but they admit that on the 12th day of September, 1881, and prior thereto said Mary P. Reed, Mrs. Belle Carpenter and Mrs. A. D. Reed, owned stock in said company to the amount of 9999 shares, or thereabouts.

3. They say in answer to the third paragraph of complainants' bill that there is no averment as to the time when A. C. Reed held shares in said company, but they admit that prior to September 7th, 1881, and not afterwards, he held shares as stated in said paragraph; but they deny that Harriet Colwell at said date held stock in said company, or that

she had held any stock therein a long time previous to said date. They admit that at said date the remaining parties named in said paragraph held and now hold the several number of shares averred to be held by them, and they admit that A. C. Reed was then the president and that J. M. Chapman was then the secretary of said company, and they continued to hold said offices, respectively, up to October 3d, 1881.

4. These defendants admit, as stated in the fourth paragraph of said bill, that defendants James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair are brothers, and that they reside at Ishpeming, Michigan; but these defendants deny that said brothers are partners in several kinds of business, or in any business at the present time; but they admit that said brothers were partners under the firm name of "St. Clair Brothers," up to some time in the fall of 1877, but not after that fall; that several years prior to the fall of 1877 the four brothers had done business as partners under the name of "St. Clair Brothers;" that under said firm name they took the lease from the Winthrop Iron Company, and afterwards assigned the same to the Winthrop Hematite Company. They aver that the said brothers were engaged in different enterprises, sometimes under the name of "St. Clair Brothers," and at other times they were mutually interested in matters without using the firm name. These defendants aver that said brothers ceased from any co-partnership in the fall of 1877; that since said date all their interests have been divided and held separately, and they admit that they have been interested together in various enterprises in which each one had individual interests in different proportions, but not as partners. These defendants deny that the stock held by said George A. St. Clair and Eugene G. St. Clair belonged to said firm, but they admit that the stock was held in different proportions by them as individuals but not as partners. They admit the execution of the lease to St. Clair Brothers, stated in the paragraph.

5. These defendants admit the formation of the Winthrop Hematite Company as averred in the fifth paragraph of said bill.

6. These defendants admit the averment contained in the sixth paragraph of said bill, except this only: They aver that said St. Clair Brothers held said stock mentioned therein as individuals, and not as partners.

7. These defendants admit the averment contained in the seventh paragraph of said bill.

8. These defendants admit the assignment of the lease as averred in the eighth paragraph of said bill, and also that it was assigned for the purpose in said paragraph stated, but they aver that it has been reassigned to the Winthrop Hematite Company, and is now held by said company.

9. To the ninth paragraph of said bill these defendants say they admit that the Winthrop Hematite Company have worked the mines as stated, and they admit that it has paid to the Winthrop Iron Company some royalties and that the stock was of some value; but they deny that such royalties were large, and they deny that the said stock was ever especially valuable; they deny that the royalties paid were divided among the stockholders of said Winthrop Iron Company at regular intervals; they admit that no dividend was paid July 15, 1881, and these defendants aver that the reasons why no dividend was then declared are truly set forth, as follows:

In 1881, up to July 15th, the sum of $2,874 only was paid in as royalties by the Winthrop Hematite Company as lessee, and this was all that was due for royalties to that date; that of this amount the sum of $2,844.63 was expended by the Winthrop Iron Company for proper and legitimate purposes, that is for salaries, taxes, notes of the company, interest on the same, etc., leaving only $25.37 which was delivered to Eugene G. St. Clair, treasurer of said company, who succeeded A. C. Reed as treasurer October 3, 1881. These defendants aver that none of the St. Clair Brothers had anything to do in distributing the several sums thus paid out

on behalf of said Winthrop Iron Company. These defendants deny that upon the supposition contained in said paragraph there should be $30,000 in the treasury on January 15, 1882, but they aver that the total amount of royalties due to said Winthrop Iron Company on said date for ore shipped will be about $19,000; that the charges against this royalty will be as follows, viz: Money expended on the deep shaft hereinafter mentioned, $3,500; local taxes to be paid for 1881, $1,600; specific taxes due in July, 1882, $434; note and interest due in June, 1882, about $1,300; which note was given in 1875 or 1876 for certain surface rights to land adjoining the land of said company; salaries and incidental expenses about $1,200; making an aggregate of about $8,034, and leaving a balance of about $11,000 that will be on hand January 15, 1882, without including any expenses incurred in the continued sinking of the deep shaft ordered by said company.

10. Answering to the tenth paragraph of said bill, these defendants aver that in the summer of 1881 the defendant, Eugene G. St. Clair, bought stock of the said Winthrop Iron Company, so that with the amount held by said George A. St. Clair, together with the amount of stock he then owned, they both held the amount named in said paragraph, namely, 12,654 shares; but they deny that said stock is owned by said St. Clair Brothers, and they deny that it was purchased by them as partners. These defendants aver that the amount of said stock purchased during the last summer by the said Eugene G. St. Clair was purchased by him for his wife and his brothers as individuals. These defendants say that in the fall of 1879 Eugene G. St. Clair attempted to buy 11,056 shares of said stock from A. C. Reed, acting for all parties who were then owners of the same; that negotiations were made, partly verbal and partly by letters, to purchase the same, which negotiations were not then consummated; that said parties continued negotiations in reference to said stock until an agreement was actually completed between them in July, 1881; that nothing further was done about

it until August 30, 1881, at which date a bill of sale of the stock was received by said Eugene G. St. Clair, who then paid about one-third part of the purchase money, and at that time about 4,000 shares of the stock was delivered to him, and the bill of sale of all of said stock was then delivered to the Fidelity Vault Company by said Reed; that at the same time said Eugene G. St. Clair delivered to said Fidelity Vault Company for said Reed time checks for the unpaid portion of the purchase price of said stock on a bank payable on demand; and the agreement between said parties was that when said Reed should deliver to said Fidelity Vault Company for said St. Clair the remainder of said stock properly assigned said checks should be delivered to said Reed; that said stock was so delivered to said Fidelity Vault Company between September 2d and September 7th, inclusive, in the year 1881; and said checks were delivered to said Reed and paid; that on said 7th day of September said Eugene G. St. Clair actually received the said certificates of stock thus left with the said Fidelity Vault Company, and then first became the legal and equitable owner of said stock. These defendants admit, however, that said stock, amounting to 11,756 shares, remained on the books of the said Winthrop Iron Company in the names of the vendors thereof, as stated in said bill; they admit that the petition for a special meeting of stockholders of said company was made at the request of said Eugene G. St. Clair, and that the copy thereof set forth in the bill of complaint is correct; they admit that A. C. Reed signed the call or notice of such special meeting as president of said company. These defendants aver that at the time said Reed signed the call for said special meeting, which was on or about the 30th day of August, 1881, he was in fact the president of said company; that he had not then parted with his stock therein, and that he was then, both in fact and of record, a stockholder of said company, and these defendants insist that he continued to be a stockholder in said company until September 7th, 1881; they also insist that all the other parties who held portions

of 11,056 shares previous to such purchase as mentioned aforesaid remained stockholders in said company until said September 7th, 1881, both in fact and of record.

These defendants aver that all the stockholders in said company, complainants included, had legal service of the notice of the time and place of holding of said special meeting made upon them; these defendants admit that the meeting was held October 1st, 1881, as averred in said bill, and that the parties charged as not being present at said meeting were in fact absent therefrom; and these defendants admit that said parties thus averred to be absent were not then stockholders, and that they had sold their stock as hereinbefore set forth, and that they ceased to be stockholders on the 7th day of September, as above stated; these defendants deny, however, that said parties had sold their stock prior to the time when the call for said meeting was signed. These defendants admit that the only parties present at said meeting were stated in said bill, and that said Harbert acted as chairman and said Breese as secretary, as averred in said bill; these defendants admit that "Exhibit F," referred to in said paragraph and attached to said bill, correctly states the number of shares of stock which was represented at said meeting, which stock was held by said Eugene G. St. Clair as trustee; they admit, also, the correctness of the proceedings of said meeting as set forth in "Exhibit F" attached to said bill. These defendants aver that the removal of said Mary P. Reed, A. C. Reed and J. M. Chapman from their office as directors was made because they had ceased to be stockholders in said company, and therefore their said office had become vacant; these defendants aver, on information and belief also, that said persons had declared that they did not consider themselves as directors any longer, that they had each one resigned the office of director then, and the defendant, Eugene G. St. Clair, then had their resignation in his hands, and so stated at said meeting; and, also, exhibited said resignation at said meeting, which resignation is in the following words:

"CHICAGO, *September* 1*st*, 1881.

Directors of the Winthrop Iron Mining Company:

GENTS: Please accept herewith our resignation as directors in the Winthrop Iron Company, also our resignation as Secretary and President and Treasurer of the same company, same to take effect at once, and oblige yours, respectfully,

J. M. CHAPMAN, *Secretary*,
A. C. REED, *Pres't & Treas'r*,
M. P. REED,
Directors.

These defendants aver, that after said resignation and acceptance thereof by the removal of said former directors, the only directors then remaining in office were Eugene G. St. Clair and Arthur B. Meeker, and that it became necessary to elect other directors to fill the vacancies in the board; but these defendants deny that any of the St. Clair brothers ever conceived the idea of so manipulating the affairs of said Winthrop Iron Company as to make the stock thereof highly valuable to them exclusively, to the injury of any other stockholder, and render the stock of the other holders of no value; these defendants deny that any of said brothers had any fraudulent purpose in purchasing said stock, or in owning a majority thereof; and they aver that they have already set forth in this paragraph the reasons why said stock was not sooner transferred on the records of said company; these defendants deny that a passage of any resolution which was passed at said meeting was the carrying out of any fraudulent purpose on the part of any of these defendants, and they also deny that it was a part of any scheme to render the stock of the complainants or of any of the stockholders in said company valueless; they aver on the contrary that every step taken at said meeting will result, and was intended to result, to the benefit of all the stockholders in said company, and for the reasons hereinafter stated; these defendants deny that the resolution in

reference to the new shaft and for the expenditure of not exceeding $50,000 therefor was entirely in the interest of said lessee, but they aver that the sinking of said shaft ordered at the said special meeting will be for the benefit of all the stockholders in said Winthrop Iron Company as hereinafter stated; these defendants deny that the royalty of fifty cents a ton is a low and inadequate one in view of the present price of pig-iron; they deny that said rate was a fair royalty in 1877, but aver that experience shows that said rate was in fact a very high one for royalty at that time; they deny that any royalty greater than twenty-five cents per ton on the new lease would be a fair one in view of the difficulties attending mining on the property of said Winthrop Iron Company; they deny that said last named rate is a ruinous and fraudulent rate, and these defendants have hereinafter set forth the reasons why such diminished rate is a reasonable one and quite enough to be paid to said company; these defendants deny on information and belief that any person or persons really responsible would be willing to pay a royalty of seventy cents per ton, and they deny that the letter attached to said bill is a *bona fide* to take a lease of said mine and pay a royalty of seventy-five cents a ton on ore mined therein. These defendants aver on information and belief that said Robert M. Cherrie never visited said mine and knows nothing of its character or of the difficulties attending the working said mine, which difficulties are hereinafter set forth.

11. These defendants answering to the eleventh paragraph of said bill admit that by the terms of the articles of incorporation of the Winthrop Hematite Company it was only to continue for six years, but they aver that under the provisions of law said articles have been amended extending the duration of its existence to thirty years.

12. These defendants admit the averment contained in the twelfth paragraph of this bill, to the effect that the Winthrop Iron Company could only exist under its present charter for the period of eighteen years after the expiration of

the term of its existing lease, but they deny that the attempt to execute a new lease to the Winthrop Hematite Company for said period of eighteen years was an attempt on the part of the St. Clair Brothers or on the part of any of them to render the stock of the complainants or of any other of the stockholders of the said Winthrop Iron Company valueless or non-income paying for the full term of the life of said company; on the contrary, these defendants aver that said new lease, if its terms be faithfully carried out by said company, will be likely to insure more royalties than said company has ever received under the old lease and for the reasons hereinafter stated.

13. These defendants admit the several averments contained in the thirteenth paragraph of said bill.

14. These defendants deny that the stock of said Winthrop Iron Company is full paid stock, but they aver, on information and belief, that the amount of capital stock of said company actually paid in is only $8,000, while the whole stock of said company is $500,000; they aver that it so appears by the articles of association; there is no record to the contrary, and these defendants are informed and believe, and, therefore, charge the fact to be, that said records are in all respects true. These defendants deny that the attempt to assess said stock is illegal and void as alleged in the fourteenth paragraph of said bill to which this paragraph is an answer.

15. These defendants deny all the allegations contained in the fifteenth paragraph of said bill of fraud on the part of said St. Clair Brothers, and all the allegations of a conspiracy on their part to reap to themselves alone all the benefit which could be derived from the ownership of the Winthrop Iron Mines; they deny that the proceedings of said special meeting are void for informalities, or for want of power on the part of the stockholders to pass the resolutions which were there passed, or for any fraud on the part of said St. Clair Brothers or either of them, attempted by them or either of them to be perpetrated upon the other share-

holders of said company; and these defendants aver that no specific informalities are shown in said paragraph or elsewhere in said bill.

16. These defendants answering to the sixteenth paragraph of said bill admit that the said new shaft was directed to be sunk by the resolution passed at said special meeting held as aforesaid; that the said new board of directors are not only about to open, but have actually commenced the opening of said deep shaft; that on the first day of December, 1881, when the injunction was served in this cause, said shaft had been sunk to a depth of between 60 and 70 feet, which depth has since been increased so that said shaft is now about 100 feet deep, and these defendants say that by the 17th day of January, 1882, it will be from 105 feet to 125 feet deep.

These defendants aver that the lease mentioned in this paragraph has been actually executed and delivered, and that it was executed and delivered to the Winthrop Hematite Company before these defendants, or any of them, had any knowledge or information of any kind that the complainants' bill had been filed in this case; they admit, however, that said lease was not recorded until December 1st, 1881, but they aver that it was so recorded before service of the subpœna and injunction in this case which were served later on the same day; these defendants aver that said lease was recorded before they or any of them had any knowledge or information of the filing of the bill of complaint in this case.

17. These defendants not only deny all conspiracy on the part of the defendants, James O. St. Clair, Eugene G. St. Clair, George A. St. Clair and Julius N. St. Clair to injure for their own profit, or for any purpose the value of the stock of complainants and other stockholders of said Winthrop Iron Company by the proceedings hereinbefore set forth; but they aver that the course determined by the stockholders of said Iron company at the said special meeting was a wise and prudent course, and well calculated to ad-

vance the interests of said company and to increase the value of its stock, and this for the following among other reasons:

18. They aver that the sinking of the deep shaft, as determined upon in said meeting, was a necessity for the profitable working of said mines; and without it or some similar improvement in the course of two or three years the mine could not be worked at a profit, and it would become necessary to abandon it.

19. They aver that by the sinking of said shaft the product of the mine will be very largely increased, so that the proceeds of the royalty determined upon at said meeting would enable the defendant, the said Winthrop Iron Company, to make upon an average larger dividends than had ever before been made or declared.

20. They aver that the royalty fixed upon and incorporated in the new lease of twenty-five cents per ton is not only a reasonable sum, but is a liberal and large remuneration and greater than that received by most mining companies in the vicinity, especially when reference is had to the difficulties of working said mine from the exceedingly great over heavy water charge, and from the loose, jointy and unsafe character of the rock in which the ore is found.

21. They aver that said lease for these and other reasons is a decidedly advantageous one for said Winthrop Iron Company, and will increase instead of lessening the value of the stock and the amount of the dividends thereof.

22. These defendants aver that while under the said lease for six years, the said Winthrop Iron Company received considerable revenue and made several dividends among its stockholders, the said lease has proved uprofitable to the lessee, the Winthrop Hematite Company; and they aver that no lease could be successfully taken by any lessee of said mine under its present condition at said rate of 50 cents per ton to be paid as royalty, nor even at the diminished rate of 25 cents per ton, as provided in said new lease hereinbefore mentioned.

23. These defendants submit that the said complainants have not in and by their said bill shown such a case as entitles them to any relief from a court of equity, and these defendants ask the same benefit of this defense as if they had demurred to said bill.

24. All which matters and things these defendants are ready to maintain and prove as this Honorable Court shall direct; and pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

THE WINTHROP IRON COMPANY,
By E. G. ST. CLAIR, *President.*
THE WINTHROP HEMATITE COMPANY,
By J. O. ST. CLAIR, *President,*
JAMES O. ST. CLAIR,
EUGENE G. ST. CLAIR,
GEORGE A. ST. CLAIR,
JULIUS N. ST. CLAIR.

M. H. CROCKER,
Solicitor for Def'ts.
C. I. WALKER,
Of Counsel.

DECREE.

UNITED STATES OF AMERICA.

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division.

IN EQUITY.

At a session of said Court, held at Grand Rapids, in Court House, on the sixth day of April, A. D. 1883.

Present, HON. JOHN BAXTER, *Circuit Judge.*

ARTHUR B. MEEKER, WILLIAM L. BROWN *and* L. B. BROOKS, *Complainants,* *vs.* WINTHROP IRON COMPANY, WINTHROP HEMATITE COMPANY, JAMES O. ST. CLAIR, EUGENE G. ST. CLAIR, GEORGE A. ST. CLAIR *and* JULIUS N. ST. CLAIR, *Defendants.*	Bill in Equity by Minority Stock.

This cause came on to be heard before the Court, at Grand Rapids, on the 2d day of October, 1882, by consent of the parties, on pleadings and proofs, and was argued by counsel for the respective parties; and the Court, upon the consideration thereof, doth now order, adjudge and decree, as follows:

I. That the lease mentioned in the bill, and bearing date November thirtieth, 1881, executed by the Winthrop Iron Company, of its mining lands and mines, together with all improvements, houses, railroad tracks and tramways, pockets on the surface, and other fixtures, to the Winthrop

Hematite Company for the term of eighteen years from December first, 1882, at the royalty of twenty-five cents per ton of ore mined and shipped, is null and void, for the fraud of the defendants the Winthrop Hematite Company and the St. Clair Brothers in procuring the same.

II. That Andrew G. Clark, of Chicago, Illinois, former President of the Winthrop Iron Company be, and he hereby is, appointed by this Court to be Receiver of the defendants, the Winthrop Iron Company, with the usual powers of Receiver in Equity, upon his giving bond in the penal sum of twenty-five thousand dollars, with sufficient sureties, to be approved by the Clerk of this Court, conditioned for the faithful performance of his trust, and that upon the delivery and filing of such bond, the said Receiver so appointed, shall be vested with all his rights and powers as Receiver.

III. That the Winthrop Iron Company, its officers, agents and servants, and the Winthrop Hematite Company, its officers, agents and servants, and the said defendants, the St. Clairs, forthwith surrender and deliver to said Receiver, all the real estate, mines and mining equipments, assets, materials, tools, machinery fixtures, effects and property of every nature and kind of or belonging to the said Winthrop Iron Company; and also all money, notes, drafts, bills of exchange, checks or other evidences of indebtedness due and owing to said Winthrop Iron Company, as well as all corporate records and papers, all record and books of account, all deeds, leases, bonds, mortgages, certificates of stock, vouchers and all papers of every nature belonging to said Winthrop Iron Company.

IV. That said Receiver continue the management of the said business of the Winthrop Iron Company, with power to lease or operate its mines and plants, until the further order of this Court; that he keep a full and accurate account of all his acts and doings as such Receiver, and report the same from time to time to the Court as may be directed;

and that said Receiver have leave to apply to the Court from time to time for such further orders and directions as may be necessary.

V. And the Court doth further adjudge and decree that the defendants, the St. Clair Brothers and the Winthrop Hematite Company, do account as trustees to and with the Winthrop Iron Company for all profits realized since December 1st, 1882, from the use and occupation of the said Winthrop Iron Company's real estate and personal property, or for a reasonable royalty upon the ore mined by them, or any or all of them, and that the complainants do now elect whether this accounting shall proceed upon the basis of the profits realized from use and occupation or reasonable royalty upon ore mined; and the said complainants, by their counsel, having elected that the accounting do proceed upon the basis of reasonable royalty: Thereupon the Court doth further order, adjudge and decree that it be referred to Henry M. Hinsdill, one of the Masters of this Court, who appears to this Court, from its knowledge of his experience in matters of accounting and his methodical and business habits, best qualified to discharge that duty, to take and state an account herein as follows:

1. That the said defendants St. Clair account to and with the Winthrop Iron Company concerning the ores mined by them and the royalty upon such ores due and owing from them to the Winthrop Iron Company, and concerning the rights and obligations of the lessor and lessee, under and according to the terms of the lease mentioned in said bill, bearing date August 2d, 1877, and expiring on December 1st, 1882.

2. That the said defendants, St. Clair and the Winthrop Hematite Company account to and with the Winthrop Iron Company for the use and occupation of its mining lands, mines, real estate and personal property, for all ore mined since the first day of December, 1882; for all property and

effects taken from the said Winthrop Iron Company's premises and used and converted; and that for the purpose of the said accountings, the said Winthrop Hematite Company, its officers and agents, and the said defendants, St. Clair, produce before the said Master, upon the said Master's order and direction, for examination, all books of accounts, papers, memoranda, and all other writings containing any entries concerning said matters, or any of them.

3. And the said Master in taking the said account, is directed to take and state the same in such manner as to furnish a basis for ascertaining and reporting the proper royalty to be charged to the Winthrop Hematite Company, and to the defendants, St. Clair, or any or either of them, because of the possession, use and enjoyment of the said mining lands, mines, and personal property of the Winthrop Iron Company since December first, 1882, retained and kept by it and them after and succeeding the expiration of said aforesaid named first lease; and also to take and state all such accounting herein ordered, so as to show the whole money and property of the Winthrop Iron Company on hand, or that ought to have been on hand, on November thirtieth, 1881, or used and expended since November thirtieth, 1881, either by it, or by the defendants, the St. Clair Brothers, or by the Winthrop Hematite Company, or either or all of them, in any and all ways, in the management of the business, affairs, property and effects of the Winthrop Iron Company, together with the dates and amounts of such expenditures and for what purpose and purposes they were made; and also so as to show to what extent, if at all, such expenditure is, or may be of value to the Winthrop Iron Company; and also so as to show to what extent such expenditure is, or may be of value to the defendants Winthrop Hematite Company, or to the St. Clair Brothers, one, or both, or either or all of them; and whether the amount voted or in fact paid for salaries or wages to the officers, agents, or servants of the Winthrop Iron Company, was in

fact reasonable and just to the stockholders of said company, or otherwise, and what, if anything, should be the amount in that regard to be allowed.

The said Master is also directed to inquire and report such sum of money as, in his opinion, shall be a reasonable compensation to be allowed to the complainants and their solicitors and counsel, for services, fees and all other necessary expenses actually incurred by them, which allowances shall be paid out of the fund in the hands of the receiver (but no allowance or allowances of any kind for costs, expenses or otherwise, shall be made to the defendants St. Clair, or to the Winthrop Hematite Company, out of such fund.)

That such Master be at liberty to make special reports from time to time, and that he make his general report concerning the matters aforesaid, with all convenient speed.

VI. And the Court reserves to itself such further directions, as may be necessary to carry this decree into effect; concerning costs; or as may be equitable and just.

JNO. BAXTER, *Judge, &c.*